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No. 34085-2-II

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IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION TWO

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IN RE THE RESTRAINT OF:

JUSTIN M. HEGNEY,

Petitioner.

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REPLY BRIEF OF PETITIONER

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ORIGINAL

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**A. ISSUES IN REPLY**

1. Did trial counsel “invite” error when he failed to except to the giving of Instruction No. 5?
2. Did Instruction No. 3 cure the problems in Instruction No. 5?
4. Could the errors in Instruction No. 5 be harmless under the facts of this case?
5. Does Washington’s decline procedure comport with Blakely v. Washington, 542 U.S. 296, 159 L. Ed. 2d 403, 124 S. Ct. 2531 (2004) and equal protection of the laws under U.S. Const. amend. 14?
6. Did the State of Washington have the obligation to turn over to the defense exculpatory evidence, prior to the decline hearing?
7. Was defense counsel ineffective for not discovering the CPS records and other mitigating evidence prior to the decline hearing?
8. Is the newly discovered evidence cumulative and material?
9. Is the State of Washington bound by international law?
10. Where the law changes because of newly discovered scientific research about adolescent brains, does it violate equal protection not to apply the new law retroactively?
11. Should this Court reconsider the Confrontation Clause issue raised on direct appeal?
12. Should Mr. Hegney be denied good-time credits?

**B. ARGUMENT IN REPLY**

**1. The Defense Did Not Invite the Errors Concerning Instruction No. 5**

The State argues that Mr. Hegney “invited” any errors contained in Instruction No. 5 because his lawyer did not except to the giving of this instruction. *State’s Response* at 17-18. To be sure, a court will not review an instructional error if the party has “invited” the error by proposing the instruction. State v. Studd, 137 Wn.2d 533, 546, 973 P.2d 1049 (1999) (“we have also held that [a] party may not request an instruction and later complain on appeal that the requested instruction was given.” (Internal quotes and citations omitted)).

However, the defense did not propose Instruction No. 5 – defense counsel merely failed to except. The failure to except to an instruction is not the same as proposing the instruction, and does not bar review of a constitutional issue. State v. Gentry, 125 Wn.2d 570, 646, 888 P.2d 1105 (“The failure to except to an erroneous instruction is different from actually proposing an erroneous instruction; the former is a failure to preserve error, the latter is error invited by the defense.”), *cert. denied* 516 U.S. 843 (1995). See also State v. Marquez, 131 Wn. App. 566, 574-75 & n. 9 & 10, 127 P.3d 786 (2006) (where record did not show defense proposed instructions, it could not be determined if instructional error was invited, and thus review was not precluded). Indeed, the cases are legion where courts have reviewed constitutional errors in jury instructions, where there was no exception at trial, never calling these errors “invited.”

See State v. Kitchen, 46 Wn. App. 232, 234, 730 P.2d 103 (1986), *aff'd* 110 Wn.2d 403, 756 P.2d 105 (1988) (jury unanimity); State v. Smith, 80 Wn. App. 462, 468, 909 P.2d 1335 (1996), *rev'd* 131 Wn.2d 258, 930 P.2d 917 (1997) (missing element in “to convict”); State v. Mills, 154 Wn.2d 1, 6, 109 P.3d 415 (2005) (missing element); State v. McCullum, 98 Wn.2d 484, 487-88, 656 P.2d 1064 (1983) (self-defense instruction).

Mr. Hegney did not propose Instruction No. 5 and, therefore, did not invite the error.

**2. Instruction No. 3 Cannot Cure the Problems in Instruction No. 5**

The State cites to no case in Washington, or any other jurisdiction, which has approved of a joint “to convict” instruction for co-defendants – an instruction which allows for conviction of either of two defendants if the jury concludes that one of the defendants or an accomplice committed the crime. Indeed, there is a complete paucity of cases on this subject because a joint liability instruction is really unheard of.

Instruction No. 3, the standard “separate crime” instruction (WPIC 3.02), does not help at all. This instruction simply informed the jurors to determine liability separately for each crime and defendant. Rational jurors would then look at the “to convict” instruction and use that as a “yardstick” to determine whether to find each defendant guilty or not guilty on the individual verdict forms. State v. Mills, 154 Wn.2d at 6.

When the jurors looked at the “to convict” instruction – No. 5 -- they were told by the court that to convict “either the defendant JUSTIN

HEGNEY or the defendant JESSE HILL,” all the State had to do was to prove beyond a reasonable doubt that “the defendant or an accomplice” committed the charged acts, without specifying which of the two defendants or any of the many alleged accomplices were involved. The State does not explain how an instruction which failed to distinguish which of the two defendants was “the defendant” insured that the jury made an individualized determination of guilt, consistent with the requirements of due process of law under U.S. Const. amend. 14 and Wash. Cons. art. 1, § 3.<sup>1</sup>

Nor does the State satisfactorily explain how an information which alleges two specific co-defendants -- Robert Hernandez and Terrance Hunt -- sufficiently put Mr. Hegney on notice as to whom the alleged principals and accomplices were when he was tried with a third individual (Jesse Hill), and mention was made of six or more other potential accomplices. While the State tries to distinguish the cases cited by Mr. Hegney as “conspiracy” cases and not accomplice cases, the State does not explain why this difference in complicity has any effect on the constitutional right to notice of the charge, as required by U.S. Const. amends. 6 & 14, and Wash. Const. art. 1, §§ 3 & 22.

The State cites to State v. Carothers, 84 Wn.2d 256, 260, 525 P.2d 731 (1974), *dissapproved on other grounds* State v. Harris, 102 Wn.2d 148,

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<sup>1</sup> Indeed, the State does not even address the jury unanimity problem raised by this instruction. *See Petitioner’s Opening Brief* at 19-21.

685 P.2d 584 (1984), for the proposition that a defendant may be convicted as an accomplice even though he was not expressly charged with being an accomplice in the information and even though he was the only person charged. That reading of Carothers is correct, but is really besides the point. The issue in this case is not that Mr. Hegney was charged as a principal but convicted as an accomplice, or that the information did not name the accomplices. Rather, the issue is that Mr. Hegney was charged as an accomplice, that two of the principals were named in the information (Mr. Hernandez and Mr. Hunt) as co-defendants, that Mr. Hegney was then tried with another individual not named in the information (Mr. Hill), evidence was introduced of still another six possible other accomplices, and the joint liability “to convict” instruction did not require specification of which defendant or accomplice committed the charged acts. Nothing in Carothers is remotely similar to this situation.

The State argues: “A similar argument was rejected in State v. Teague, 117 Wn. App. 831, 73 P.3d 402, rev’d on other grounds, 152 Wn.2d 333, 96 P.3d 974 (2004).” *State’s Response* at 20. Actually, the cited case is “Teal,” not “Teague” and the Washington Supreme Court affirmed the Court of Appeals, rather than reversed it. However, in either case, Teal is not on point.

In Teal, the “to convict” instruction in a robbery trial of one defendant simply referred to “the defendant.” There was a separate accomplice liability instruction, and there was no question that if the

defendant was guilty at all, it was under an accomplice liability theory. On appeal, the court reversed the conviction because of a defective accomplice liability instruction under State v. Cronin, 142 Wn.2d 568, 14 P.3d 752 (2000). Mr. Teal sought reversal and dismissal because of insufficient evidence, arguing that the “to convict” instruction did not contain the accomplice liability language (“the defendant or an accomplice”). He argued that because there was insufficient evidence that he was the principal, under the instructions of that case, the conviction should be reversed and dismissed.

Both the Court of Appeals and the Supreme Court rejected this argument:

Although a "to convict" instruction must provide a complete statement of the elements of the crime charged, accomplice liability is not an element of the crime for which Teal was charged, nor is accomplice liability an element of, or alternative means of, committing a crime.

152 Wn.2d at 338. While it is better practice to put “the defendant or an accomplice” in the “to convict” instruction, no error occurred.

Teal is not at all similar to the instant case. Teal is a sufficiency of the evidence case, and is not a case involving whether the instructions weakened the State’s burden of proving individualized guilt. In Teal, only one person was on trial (the case is silent about the fate of the principal), and there was no question who the instructions referred to. Teal simply does not address the situation where, as in Mr. Hegney’s case, there are



two defendants on trial, with multiple possible accomplices, and there is merely one instruction which lumps them all together.

### 3. **The Instructional Errors Are Not Harmless**

The State argues that even if Instruction No. 5 was erroneous, the error was harmless, because the evidence was “overwhelming.” *State’s Response* at 21-25. However, it is doubtful that an instruction which weakens the State’s burden of proving individualized guilt can ever be harmless. Such an instruction constitutes structural error and is cause for automatic reversal because the instruction taints the entire proceeding, weakening the State’s burden of proof. See State v. Levy, \_\_\_ Wn.2d \_\_\_, \_\_\_ P.3d \_\_\_ (No. 75913, 4/13/06) (“A structural error resists harmless error review completely because it taints the entire proceeding.”); Sullivan v. Louisiana, 508 U.S. 275, 124 L.Ed.2d 182, 113 S. Ct. 2078 (1993) (defective reasonable doubt instruction).

However, even if the error is subject to the harmless error test, the error cannot be harmless, given the conflicting evidence that Mr. Hegney was not an accomplice to anyone. There were witnesses who testified that Mr. Hegney was merely present, but did not participate in the assault of Mr. Toews.

For instance, Jermaine Beaver testified that he was part of the group of children who kicked Mr. Toews, but that Mr. Hegney was standing in the behind him with Elisha Thompson and never saw Mr.

Hegney hit or kick Mr. Toews during the entire incident. RP (1/16/02)

2373-74, 2376-77.<sup>2</sup> At one point, Kashif Oyenini gave similar testimony:

Q. Who was involved in the kicking of this individual?

A. I think it was Jamar, Terry and Robert and Manuel and Andrew.

Q. Where was Justin?

A. Maybe at the corner with Elisha.

RP (1/16/02) 2428.

Just about every single witness in this case, including both the eyewitnesses and the various co-defendants, gave multiple and often contradictory statements to the police, in defense interviews and testimony in other trials. Different versions had different people involved at varying levels of culpability. The fact that some of the versions which were favorable to Mr. Hegney were contradicted by other statements by the same witnesses is really irrelevant to the harmless error analysis. The

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<sup>2</sup> Q. When you gave your statement, you indicated, and you also indicated on direct, that he [Mr. Hegney] was standing with the girl that you now know as Elisha.

A. Yes.

Q. Were they involved in the assault on Mr. Toews?

A. No, not that I seen.

Q. And you never seen him kick or hit Mr. Toews; is that correct?

A. No.

RP (1/16/02) 2376-77.

jurors did not have to believe the version of the various witnesses' statements which were favorable to the State's position. The point is that there was evidence supporting the defense view that Mr. Hegney was not involved in the kicking of Mr. Toews, and that he was merely in the background, and was no different from Elisha Thompson or Kashif Oyenini, children whom the State never even bothered to charge even though they were present.

Given this evidence, which was disputed by the State, but still before the jury, the errors in Instruction No. 5 cannot be harmless and Mr. Hegney was prejudiced by that instruction. The conviction should be vacated.

**4. Does Washington's Decline Procedure Comport with *Blakely*?**

The State continues to rely on pre-Blakely case law in support of its argument that Washington's juvenile decline procedure satisfies federal due process and the right to a jury trial under U.S. Const. amends. 6 and 14. Yet, Blakely "worked a sea change in the body of sentencing law." United States v. Ameline, 376 F.3d 967, 973 (9<sup>th</sup> Cir. 2004), *quoted in* United States v. Booker, 543 U.S. 220, 329, 160 L.Ed.2d 621, 125 S. Ct. 738 (2005) (Breyer, J., dissenting in part). It was this change in the law which has led the Washington Supreme Court to hold that Blakely should not be applied retroactively. In re Evans, 154 Wn.2d 438, 114 P.3d 627

(2005).<sup>3</sup> Accordingly, the simple citation to pre-Blakely cases, without analysis, is not sufficient.

The only post-Blakely case identified by the State is State v. Kalmakoff, 122 P.3d 224 (Alas. App. 2005). In Kalmakoff, the Alaska Court of Appeals reversed a trial court's ruling that Blakely required a jury trial before a juvenile's case was transferred to adult court, where the juvenile faced a vastly increased sentence. The Alaska court noted one pre-Blakely decision that supported the juvenile's position, Commonwealth v. Quincy Q., 434 Mass. 859, 753 N.E.2d 781 (2001), but then decided, without much analysis, to follow the "weight of authority" supporting the government's position, citing to the same cases that the State cites to in its brief. 122 P.3d at 226-27. The court held: "We would only change this balance if we were convinced that the United States or Alaska Constitution required us to change it. Because the great weight of authority supports the constitutionality of the State's juvenile waiver procedure, we uphold it." 122 P.3d at 228.

Simply tallying up pre-Blakely cases is hardly persuasive legal analysis, since the overwhelming majority of pre-Blakely cases rejected arguments that the Supreme Court ultimately adopted in Blakely. Rather, the key issue is one which both the State and the Alaska Court of Appeals

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<sup>3</sup> The mandate in this case did not issue until December 17, 2004. Ex. 16. Blakely came out on June 24, 2004. Thus, because Mr. Hegney's appeal was not final on direct review when Blakely issued, Blakely applies to this case. See In re Evans, 154 Wn.2d at 448 (Blakely does not apply retroactively to cases already final on direct review).

ignore – whether the decline procedure can still be written off as merely a “jurisdictional decision,” which a court makes using a preponderance standard, in the absence of a jury.

It is important to remember that Blakely made it clear that it is not the label that is determinative, but whether the factual determinations made increase the authorized punishment. See Blakely, 542 U.S. at 306-07. See also Appendi v. New Jersey, 530 U.S. 466, 494, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000) (“[D]oes the required finding expose the defendant to a greater punishment than that authorized by the jury’s guilty verdict?”). What this means is that the State cannot re-label the procedure by which a 15-year-old child is subjected to a mandatory 20 year sentence in adult prison as “jurisdictional” so as to avoid providing that child with a jury trial with a reasonable doubt standard on the key issues in the case – whether the child should be treated as a child or as no different from an adult.

But even if the jurisdictional label excuse were constitutionally permissible, it would not apply here because juvenile court is merely “a division of the superior court,” RCW 13.04.021(1), “not a separate constitutional court.” State v. Werner, 129 Wn.2d 488, 492, 918 P.2d 918 (1996). Judge Strombom had jurisdiction when she oversaw the decline hearing; she had jurisdiction when she oversaw the jury trial; and she had jurisdiction when she sentenced Mr. Hegney to serve 20 years in an adult prison. Thus, pragmatically speaking, the decline decision did not

determine “jurisdiction,” but rather the maximum sentence that Judge Strombom could impose. Viewed in this light, the decision whether to decline a juvenile into adult court is one where the tail wags the dog of the substantive offense. The trial court’s findings, made upon a mere preponderance of the evidence standard, extended the permissible punishment from just a few years to a twenty-year mandatory minimum.

Such a procedure violates due process of law and the right to a jury trial under U.S. Const. amends. 5, 6 & 14, and Wash. Const. art. 1, §§ 3 & 22.

**5. The State Fails to Justify the Use of a Lower Standard of Proof in Decline Hearings**

Washington’s scheme for punishing juvenile offenders gives more procedural protections to offenders who remain in the juvenile system, and face rehabilitative sentences, than those who are turned over to the adult system. Juveniles faced with a manifest injustice finding, facing incarceration until age 21, are given the protections of a reasonable doubt standard, while those who face being bound over to the adult system, who then face a potential of life in prison, and stiff mandatory minimums, have the protections of only a preponderance of evidence burden of proof. This difference in the standard of proof violates equal protection and substantive due process under U.S. Const. amend. 14 and Wash. Const. art. 1, § 3.

The State’s response does not make sense: “[The] Defendant is not similarly situated to other juvenile defendants because a court has already

made a determination under the Kent factors that he should be treated as an adult.” *State’s Response* at 16. This reasoning is circular because the precise issue is whether a preponderance of evidence standard for making the Kent findings was appropriate.

Further, the State argues that there is a rational basis for distinguishing between those children who remain in the juvenile system and those children who are tried and punished as adults. *State’s Response* at 16-17. Yet, the State fails to explain what the rational basis is for using a lower standard of proof to decline a child into adult court, while using a higher standard of proof in the manifest injustice determination, where the stakes are much less. As noted, in the Opening Brief, the severity of consequences of the proceeding is the determinative factor that should drive the choice of standard of proof. In re Winship, 397 U.S. 358, 368 n.6, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970).

Accordingly, this Court should hold that the decline procedure in Washington violates substantive due process and equal protection of the laws under U.S. Const. amend. 14 and Wash. Const. art. 1, §§ 3 & 12.

**6. Due Process Was Violated by the Failure to Disclose Exculpatory Evidence; and the Failure to Obtain the Records Constituted Ineffective Assistance of Counsel**

The State of Washington had information in its possession (CPS/DSHS records) showing that Mr. Hegney grew up in an abusive family. These records would have cast Mr. Hegney in a different light – a child who grew up in an abusive environment -- and would have made him

a candidate for a rehabilitative program at Echo Glen, where counselors could have offered him a program designed for such children. Ex. 23 (Certification of Karil Klingbeil). The State denies culpability for the failure to turn over these records, blaming it on the juvenile court probation department.

First, the State misunderstands the nature of its disclosure obligations under the Due Process Clause of U.S. Const. amend. 14. Under Kyles v. Whitley, 514 U.S. 419, 131 L.Ed.2d 490, 115 S. Ct. 1555 (1995) and Brady v. Maryland, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963), the State had the affirmative duty to obtain exculpatory evidence from law enforcement agencies. Here, while the juvenile probation officer, Ms. Varela, requested the records on February 12, 2001 and did not actually obtain the records from DSHS/CPS until February 23, 2001, *State's Response*, App. K, the records were clearly in the possession of DSHS/CPS.<sup>4</sup>

DSHS/CPS is an agency of the State of Washington – the same political entity which prosecuted Mr. Hegney and is incarcerating him for twenty years. DSHS/CPS is legally mandated to investigate child abuse and neglect and to “bring the situation to the attention of an appropriate court, or another community agency: . . . If the investigation reveals that a

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<sup>4</sup> The State suggests that because Ms. Varela turned the records over to Mr. Fricke after Judge Strombom announced her decision to decline Mr. Hegney, but before she signed the written findings, that Mr. Fricke should have made a motion to reconsider. *State's Response* at 29-30. Yet, Mr. Fricke *did* file a motion to reconsider, Ex. 3, a motion which Judge Strombom summarily refused to entertain. Ex.4.



crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.” RCW 74.13.031(3). See also RCW 26.44.030 (regarding mandatory reporting). DSHS/CPS records are normally confidential, except that they can be freely shared with other participants in the juvenile justice system for investigative purposes. RCW 13.50.100(3). Further, CPS investigators are often considered to be law enforcement agents for purposes of custodial interrogation because of their close working relationship with the police. State v. Nason, 96 Wn. App. 686, 692-94, 981 P.2d 866 (1999).

Thus, one branch of the State’s investigative apparatus, charged with protecting the welfare of abused and neglected children, had information in its possession which directly related to the fate of Justin Hegney, a child which another branch of the State’s law enforcement apparatus wished to remove from the juvenile system and punish for 20 years as if he was an adult. Under these circumstances, it violates due process under the 14<sup>th</sup> Amendment for the State of Washington to have not disclosed the DSHS/CPS records to the defense before Judge Strombom made her declination decision.

To the extent that the defense bore the burden of using “due diligence” to obtain these records by itself, defense counsel was ineffective under U.S. Const. amends. 6 & 14 and the standards of Strickland v.

Washington, 466 U.S. 668, 80 L.Ed.2d 674, 104 S. Ct. 2052 (1984).<sup>5</sup> As will be discussed below, the records clearly would have made a difference in how Judge Strombom considered Mr. Hegney, and counsel should have obtained them on his own, without waiting for the State to turn them over after the conclusion of the decline hearing.

7. **The Newly Discovered Evidence Was Not Cumulative and Was Material**

The State argues that none of the new evidence was material and that it is cumulative. The State also argues that the evidence of abuse in Mr. Hegney's home did not involve him, the physical abuse being directed toward his siblings. The State claims that none of the Kent<sup>6</sup> factors involve "consideration of family background or prior abuse of the defendant." *State's Response* at 31. The State misunderstands the legal framework for declination and has not reviewed the newly discovered evidence thoroughly.

The Kent factors include:

(1) the seriousness of the alleged offense and whether the protection of the community requires declination; (2) whether the offense was committed in an aggressive, violent, premeditated or willful manner; (3) whether the offense was against persons or only property; (4) the prosecutive merit of the complaint; (5) the desirability of trial and disposition of the entire case in one court, where the defendant's alleged accomplices are adults; (6) the sophistication and maturity of the juvenile; (7) the

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<sup>5</sup> Defense counsel was also ineffective because he did not obtain a neuropsychological evaluation. See Opening Brief at 36. The State ignores this claim for relief in its response.

<sup>6</sup> Kent v. United States, 383 U.S. 541, 16 L.Ed.2d 84, 86 S. Ct. 1045 (1966).

juvenile's criminal history; and (8) the prospects for adequate protection of the public and rehabilitation of the juvenile through services available in the juvenile system.

State v. Furman, 122 Wn.2d 440, 447, 858 P.2d 1092 (1993). Factors 6 and 8 are relevant to the newly discovered evidence – the child's sophistication and maturity, and the prospects for protection of the public and rehabilitation through the juvenile system.

Throughout the decline hearing, Mr. Hegney was characterized as an “out of control” teenager, and who just refused to follow the rules. See RP (2/20/01) 646 (Judge Strombom: “At best, I can only conclude that Justin just didn't like the rules.”). While it was clear that Mr. Hegney's father was strict, while his mother was lenient, there was very little information presented to Judge Strombom about the dynamics of either home, and what the source was of his family “problems” as they were described, a deficit specifically noted by Judge Strombom in her ruling. RP (2/20/01) 646. If Mr. Hegney was simply “incorrigible,” then the judge had little option other than to send him to adult prison, rather than a juvenile institution.

However, it is now clear that Mr. Hegney was not an evil child, bent on breaking the rules. Rather, he grew up in an abusive environment – a violent environment where his siblings were tortured and physically abused by parents, babysitters and other adults. Ex. 19, 20, 21.<sup>7</sup> None of

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<sup>7</sup> This evidence did not surface at the time of the decline hearing for a variety of reasons. As noted, the CPS records were disclosed after the decline hearing. Mr. Hegney's (continued...)

this information was presented earlier, and certainly it does not compare to the general category of “family problems” or “strict v. lax” parental controls.

The State is correct that Mr. Hegney was not the direct target of the physical abuse. Yet, he was the subject of emotional abuse, and, as Ms. Klingbeil now notes, growing up in a household filled with violence would have an impact on him (as it would on anyone) and would have caused his poor judgment, his lack of empathy and his behavioral problems. Ex. 23. The lack of empathy in particular is important in the instant case because of Justin’s apparent lack of concern for the victims of the various crimes he was accused of participating in, where other children were clearly the aggressors and leaders.

The social causes of Mr. Hegney’s lack of good judgment should then be seen in combination with the organic causes. Here, not only has the Legislature now recognized that adolescent brains are not fully developed, causing a lack of impulse control, EHB 1187, but Mr. Hegney has suffered some type of head injury in the past which caused mild brain damage. This injury would have interfered with Mr. Hegney’s abilities to process information, to formulate appropriate action and to integrate feedback. Ex. 25.

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<sup>7</sup>(...continued)  
sister had her own drug abuse issues and did not disclose accurate information to the defense expert. Ex.20. Mr. Hegney’s brother, Jeramy, was never actually contacted by the defense expert. Ex. 21, 23..

Dr. Briggs' report has not just been "throw[n] out to this court," as the State claims. *State's Response* at 31. Rather, the fact that Mr. Hegney has mild brain damage would explain Mr. Hegney's lack of judgment and why he may have been hanging out with the likes of Terry Hunt, and why he may not have done anything to prevent Mr. Hunt from killing Mr. Toews.

Both the evidence of an abusive environment while growing up and the brain injury would have been important in determining Mr. Hegney's sophistication, maturity and his ability to be rehabilitated, both factors in the Kent equation. The State ignores Ms. Klingbeil's conclusions that these areas would have been important to present a fuller picture to the judge and to provide her with an explanation for Mr. Hegney's seeming incorrigibility. Moreover, Ms. Klingbeil could have suggested an alternative placement for Mr. Hegney, at Echo Glen, which would have been equipped to handle a child who grew up in an abusive environment. Ex. 23.

All in all, the newly discovered evidence would have been material, and was not cumulative. The failure of this evidence to come out at the decline hearing was prejudicial and constituted a violation of due process and the right to counsel, under U.S. Const. amends. 6 & 14 and Wash. Const. art. 1, §§ 3 & 22. This Court should either vacate the judgment or send this case to the trial court for a reference hearing.

## **8. International Law Is Important**

The State disputes the applicability of international law to the instant case, arguing that “a court is bound by a properly enacted constitutional statute, even if that statute violates international law.” *State’s Response* at 36. Of course, similar arguments are often made by regimes which routinely violate human rights, which reject international criticism on the grounds that domestic law allows for a particular practice which the rest of the civilized world condemns.

What the State ignores, however, is the Supremacy Clause of the United States Constitution, art. VI, cl. 2, which establishes that all “Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, and Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” When the United States signs and ratifies a treaty, as it has with the International Covenant on Civil and Political Rights, that treaty preempts state law. See, e.g. *El Al Israel Airlines, Ltd v. Tseng*, 525 U.S. 155, 175, 142 L.Ed.2d 576, 119 S. Ct. 662 (2004) (ratified treaty preempted state common law in personal injury action). Even a signed, but unratified treaty, such as the Convention on the Rights of the Child, creates certain obligations on the part of the signing country:

Prior to the entry into force of an international agreement, a state that has signed the agreement or expressed its consent to be bound is obliged to refrain from acts that would defeat the object and purpose of the agreement.

American Law Institute, 1 *Restatement of the Law, Third; The Foreign Relations Law of the United States*, § 312(3), at 171-72 (1987). Finally, both unratified treaties and other non-treaty sources of international law are binding as customary international law. Cf Sosa v. Alvarez-Machain, 542 U.S. 692, 720-25, 159 L.Ed.2d 718, 124 S. Ct. 2739 (2004) (common law creates cause of action for certain violations of customary international law).

The clear emerging consensus is that children have the right to be treated as children, and not be punitively punished as adults. While the State seeks to minimize the severity of the sentence imposed on a 15-year-old child -- "In fact, [the] defendant will be eligible for release when he is approximately 35 years of age, a sentence far removed from either a life term or death," *State's Response* at 40 -- such minimization of the inhumane effects of trying and punishing a child as if he was an adult is precisely the problem. While it has apparently become routine to punish children in this way, this does not make it right. This Court should overrule State v. Massey, 60 Wn. App. 131, 803 P.2d 340 (1990) under international law and under U.S. Const. amend. 8 and Wash. Const. art. 1, § 14.

**9. EHB 1187 Should be Retroactively Applied**

Even though the Legislature has now determined that "adolescent brains . . . differ significantly from those of mature adults," EHB 1187, § 1, and has declared that a 20-year mandatory minimum should no longer

be automatically imposed on a child convicted of first degree murder, the State argues that this finding has no bearing on Mr. Hegney's case. The State relies on cases such as State v. Ross, 152 Wn.2d 220, 95 P.3d 1225 (2004), arguing that merely because the Legislature changed the standard sentence range for a crime, that does not mean that equal protection requires the retroactive application of the new sentence to older cases.

The difficulty with the State's analysis is that it ignores the Legislative declaration of policy in § 1 of EHB 1187, which sets out a legislative determination as to current scientific findings about the brains of children. This is not simply a bill which changes the standard range for a particular crime, after a determination by the Legislature that some crimes should not be punished as greatly as they had been in the past. See, e.g., State v. Ross, 152 Wn.2d at 240-41; In re Stanphill, 134 Wn.2d 165, 175, 949 P.2d 365 (1998). Rather, this is an instance where the Legislature has determined that science has changed, and that now it is clear that the brains of children are different from brains of adults, and thus the actions of juvenile offenders ought to be punished less severely than similar actions of adults. This is akin to a legislative downgrading of an entire crime (rather than changing the standard ranges), reflecting a legislative determination that the offense is less culpable. See State v. Wiley, 124 Wn.2d 679, 687, 880 P.2d 983 (1994) (where Legislature downgrades crime's status, court must give retroactive effect to that change).



For equal protection purposes, there no longer can be any rational reason to apply an older statute with a 20-year mandatory minimum, with no exceptions for juveniles. The Legislature has recognized that science has progressed and that children who commit first degree murder are not as culpable as adults committing the same crime. Equal protection under U.S. Const. amend. 14 and Wash. Const. art. 1, § 12, requires the retroactive application of EHB 1187 because there is no rational reason why a child who was convicted of a 2000 murder should not be given the same benefits of current brain research as a child charged with a 2005 murder.

**10. Crawford Requires Reconsideration of the Confrontation Clause Issues**

The State argues that Crawford v. Washington, 541 U.S. 36, 158 L.Ed. 2d 177, 124 S. Ct. 1354 (2004) should not apply retroactively to this case, citing In re Markel, 154 Wn.2d 262, 111 P.3d 249 (2005). *State's Response* at 43. The short answer to the State's argument is that Crawford was issued on March 8, 2004. Mr. Hegney's direct appeal was not mandated until December 17, 2004. Therefore, the case was still on direct appeal when Crawford was announced, and thus the principles of Crawford apply to Mr. Hegney. See also Bockting v. Bayer, 399 F.3d 1010 (9<sup>th</sup> Cir. 2005) (Crawford applies retroactively to cases on collateral review).

The spirit of Crawford -, i.e., distrust for out-of-court custodial statements of co-defendants to the police – should lead this Court to

reexamine its earlier rulings regarding the Confrontation Clause issues raised by the admission of Mr. Hill's statements to the police. The clear meaning of Hill's claims that "everybody" hit Mr. Toews was that Mr. Hegney was part of this group. That this was more than just some "implication" is clear from the context, as well as from the State's theory of group liability. Mr. Hegney urges the Court to re-evaluate, and to hold that the admission of Mr. Hill's statements at a joint trial violated the Confrontation Clause of U.S. Const. amend. 6, as incorporated into U.S. Const. amend. 14.

**11. Laws of 1997, ch. 338 Violated the Same Subject Rule**

The State's (Attorney General's) only argument regarding the deprivation of "good time" credits to those convicted of first degree murder is to cite to the Legislature's re-enactment of former RCW 9.94A.120 in Laws of 1997, ch. 338, § 4. The State argues that the bill title for this enactment was a "general title" and thus did not violate Wash. Const. art. 2, § 19.

Laws of 1997, ch. 338, was a 125-page long statute. The State sets out a portion of the bill title at pages 8-9 of its brief. However, it excludes an important part – the words "JUVENILE OFFENDERS" which preceded the description as "AN ACT Relating to offenders . . . ." A copy of the relevant page of this bill is attached in the Appendix to this brief.

Laws of 1997, ch. 338, passed through the Legislature as E3SHB 3900. A copy of the Final Legislative Report on this bill, from 1997, is

also attached to this brief. Notably, the Legislature described this bill as “revising the Juvenile Code.” The bill contains many provisions dealing with juvenile law, but depriving all defendants convicted of first degree murder of good time credits is never mentioned in the summary, not even in the section dealing with “Adult Provisions” of the bill.

Re-enacting a provision of the law barring good time credits to those convicted of first degree murder in adult court in a bill addressing “Juvenile Offenders” violates Wash. Const. art. 2, § 19. State v. Cloud, 95 Wn. App. 606, 976 P.2d 649 (1999). See also Amalgamated Transit v. State, 142 Wn.2d 183, 211, 11 P.3d 762 (2000) (setting out examples of violations of single subject rule).

**C. CONCLUSION**

For the foregoing reasons, and the reasons set out in the opening brief and petition, this Court should grant relief and vacate the conviction.

DATED this 20 day of April 2006.

Respectfully submitted,

  
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NEIL M. FOX, WSBA NO. 15277  
Attorney for Petitioner

## Appendix

With the exception of sections 3 and 4, I am approving Substitute House Bill No. 2279."

## CHAPTER 338

[Engrossed Third Substitute House Bill 3900]

### JUVENILE OFFENDERS

AN ACT Relating to offenders; amending RCW 5.60.060, 9.94A.040, 13.04.011, 13.40.010, 13.40.037, 13.40.037, 13.40.040, 13.40.045, 13.40.050, 13.40.060, 13.40.070, 13.40.077, 13.40.100, 13.40.110, 13.40.130, 13.40.135, 13.40.150, 13.40.160, 13.40.190, 13.40.193, 13.40.200, 13.40.210, 13.40.230, 13.40.250, 13.40.265, 13.40.320, 13.50.010, 13.50.050, 72.01.410, 72.09.460, 9A.36.045, 9A.36.050, 9A.41.010, 9A.41.040, 9.94A.103, 9.94A.105, 9.94A.310, 10.99.020, 10.99.040, 10.99.050, 82.44.110, 69.50.520, and 13.40.080; reenacting and amending RCW 9.94A.030, 9.94A.120, 9.94A.360, 13.04.030, 13.40.020, 13.40.020, 9.94A.320, and 9A.46.060; adding new sections to chapter 13.40 RCW; adding a new section to chapter 70.96A RCW; adding a new section to chapter 72.01 RCW; adding a new section to chapter 43.121 RCW; creating new sections; repealing RCW 9.94A.045, 13.40.025, 13.40.075, 13.40.125, and 13.40.0354; prescribing penalties; providing effective dates; providing expiration dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**Sec. 1.** RCW 5.60.060 and 1996 c 156 s 1 are each amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW: **PROVIDED**, That the spouse of a person sought to be detained under chapter 70.96A or 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.250, a physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer making the communication, be compelled to testify about any communication made to the counselor by the officer while receiving counseling. The counselor must be designated as such by the sheriff, police chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer.

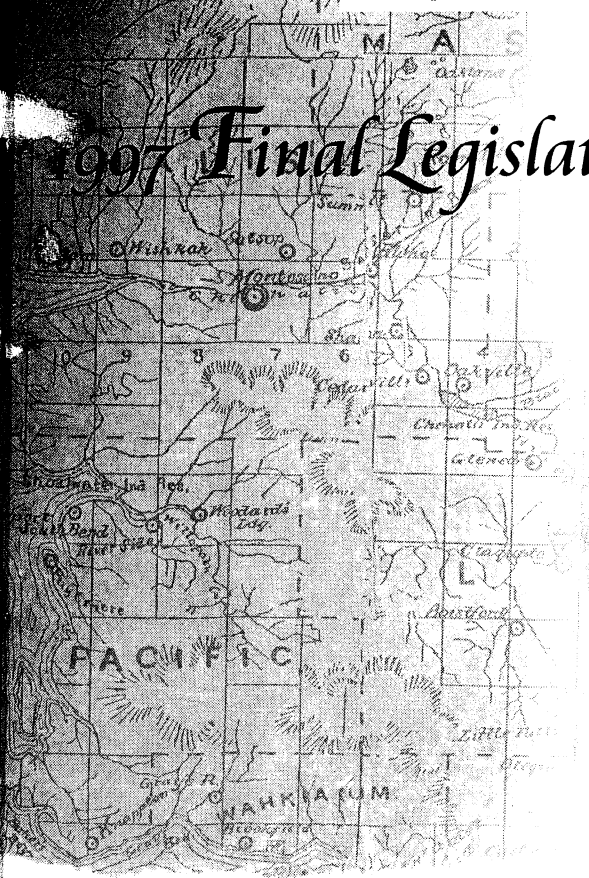
(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, or civilian employee of a law enforcement agency, who has received training to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made by the victim to the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning



# 1997 Final Legislative Report

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## Fifty-fifth Washington State Legislature 1997 Regular Session

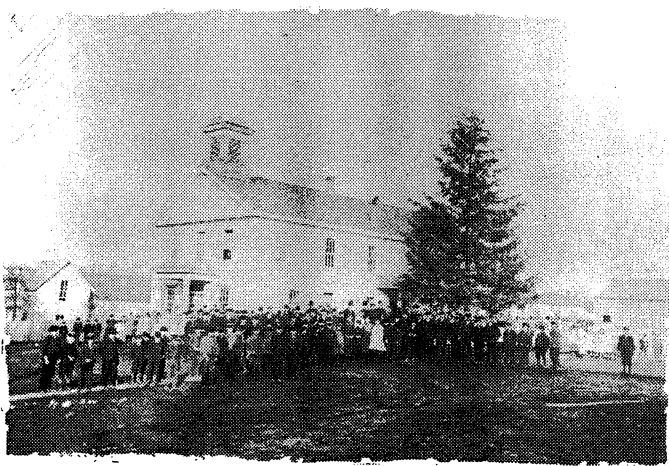
This issue of the 1997 Final Legislative Report displays a collection of photos focusing on the history of education in Washington State.

**Left:** William Winlock Miller (Olympia) High School bus drivers waiting for students to board. Early 1900s.

**Top:** Schoolhouse and class at what is now Dupont, circa 1880.

**Right:** Gathering at a high school in Olympia, circa 1882.

northeast corner of Union and Washington streets.



Photos provided by the Washington State Library.

**SHB 2279**  
**PARTIAL VETO**  
 C 337 L 97

Revising the basic health plan.

House Committee on Appropriations (originally sponsored by Representatives Huff and Backlund).

House Committee on Appropriations

**Background:** In 1995, the Legislature made a number of changes to the Basic Health Plan (BHP). Mental health, chemical dependency treatment, and organ transplant benefits were added. To boost enrollments in the BHP, an incentive for health insurance agents and brokers to receive a commission for individual or group enrollments in the BHP was created. A process for financial sponsorship of enrollees was put in place. Payments made on behalf of the enrollee are prohibited from exceeding the total premium due from the enrollee.

**Summary:** An agent or a broker may receive a commission for enrolling a person in the Basic Health Plan if funding for the commission is specifically provided. The prohibition against financial sponsor payments exceeding premiums due from the enrollee is deleted. Chemical dependency, mental health, and organ transplant benefits may be offered by the Basic Health Plan if funding is available. A person who solicits applications for the BHP is required to comply with the insurance code, including requirement to be licensed as an agent.

Four technical and clarifying amendments are made to the Health Insurance Reform Act (enacted this session as HB 2018). Two amendments clarify statutory references. One amendment clarifies that underwriting for the high-risk pool is to be based on the rules for the small group rather than the individual market to prevent gender inequity. The last amendment provides a definition for "covered person" which was mistakenly deleted in the Health Insurance Reform Act.

**Notes on Final Passage:**

House	55	42	
Senate	27	20	(Senate amended)
House			(House refused to concur)

**First Conference Committee**

Senate			(Senate refused to adopt)
House			(House refused to adopt)

**Second Conference Committee**

Senate	47	0
House	56	42

**Effective:** July 1, 1997 (Sections 1 & 2)  
 July 27, 1997

**Partial Veto Summary:** The Governor vetoed two technical corrections to ESHB 2018.

**VETO MESSAGE ON HB 2279-S**

May 13, 1997

To the Honorable Speaker and Members,  
 The House of Representatives of the State of Washington

Ladies and Gentlemen:

I am returning herewith, without my approval as to sections 3 and 4, Substitute House Bill No. 2279 entitled:

"AN ACT Relating to the basic health plan;"

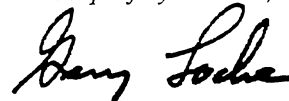
I have vetoed sections 3 and 4 of SHB 2279 because they amend sections of ESHB 2018 that I have already vetoed. Section 3 makes reference to Section 203 of ESHB 2018 which would have limited the open enrollment period for health insurance to two months per year. This section represents a significant change to current policy and could require individuals to wait as long as 13 months for regular health insurance coverage.

Section 4 of SHB 2279 makes reference to section 204 of ESHB 2018 which would have allowed health carriers the option to discontinue or modify a particular plan with ninety days' notice to enrollees, with no requirement that comparable benefits be offered in another plan. Again, this is a significant change to current law which requires that carriers may not discontinue a plan unless the carrier offers a comparable product as an alternative.

For these reasons, I have vetoed sections 3 and 4 of Substitute House Bill No. 2279.

With the exception of sections 3 and 4, I am approving Substitute House Bill No. 2279.

Respectfully submitted,



Gary Locke  
 Governor

**E3SHB 3900**  
 C 338 L 97

Revising the Juvenile Code.

By House Committee on Appropriations (originally sponsored by Representatives Sheahan, Ballasiotes, Schoesler, Bush, Honeyford, Carrell, Chandler, Mitchell, Clements, Huff, Thompson, Hankins, Mulliken, Koster, Carlson, Cairnes, Cooke, Johnson, Skinner, Mastin, Smith, Crouse, Benson, Alexander, Talcott, Robertson, Lisk, Zellinsky, Boldt, Delvin, Sterk, Lambert, Hickel, Backlund and Pennington).

Senators Roach, Schow, Horn, Swecker, Zarelli, Johnson, Rossi, Sellar, Hale, Hochstatter, McCaslin, Oke, Stevens, McDonald, Morton, Deccio, Benton, Anderson, Finkbeiner, Strannigan.

House Committee on Law & Justice

House Committee on Criminal Justice & Corrections

House Committee on Appropriations

**Background:**

**I. Juvenile Court Jurisdiction**

The juvenile court is a division of superior court. It generally has exclusive original jurisdiction over a juvenile.

nile under the age of 18 who is alleged to have committed an offense, traffic infraction, or violation. There is no specific provision granting the juvenile court jurisdiction over civil infractions.

A juvenile may be prosecuted as an adult in adult criminal court if the juvenile is subject to "automatic decline" or if the juvenile court declines to exercise jurisdiction over the juvenile after a decline hearing.

A. Automatic Decline: A juvenile must be automatically prosecuted as an adult if the juvenile is 16 or 17 years old and the alleged offense is: (1) a serious violent offense; or (2) a violent offense and the offender has a specified level and type of criminal history.

B. Decline Hearings: The juvenile court may decline to exercise jurisdiction over a juvenile offender and may transfer the offender to adult court under a procedure called a decline hearing. The prosecutor, the juvenile, or the court may file a motion for the transfer of any juvenile to adult court.

The court must hold a decline hearing, unless waived by all parties, if the juvenile is: (1) 15, 16, or 17 years old and the alleged offense is a class A offense; or (2) 17 years old and the alleged offense is second-degree assault, first-degree extortion, indecent liberties, second-degree child molestation, second-degree kidnapping, or second-degree robbery.

## II. Disposition Standards

If a juvenile is adjudicated of an offense, the court determines the offender's disposition based on a formula that considers the following factors: (1) the seriousness level of the current offense; (2) the age of the offender; (3) the seriousness level of any prior criminal history; and (3) the recency of any prior criminal history.

Based on these four factors, the juvenile offender receives a certain number of "points" that will determine the standard range disposition for the offense, based on whether the offender is a "minor/first," "middle," or "serious" offender.

A. Offense Category Schedule: The seriousness of an offense is determined according to the offense category schedule. The offense category schedule ranks offenses from A+ to E, with A+ offenses being the most serious and E offenses being the least serious. Murder in the first degree and murder in the second degree are the only A+ offenses.

B. Standard Range Disposition: The standard range disposition for an offender is determined by reference to a "grid" developed for each category of offender (minor/first, middle, or serious) that specifies the standard range based on the number of points calculated for the offender. A juvenile is generally under county jurisdiction if the offender is subject to a period of confinement of 30 days or less and under state Juvenile Rehabilitation Administration (JRA) jurisdiction if the offender is subject to confinement for more than 30 days.

In general, a minor/first offender is not subject to a disposition of confinement. A minor/first offender may

receive community supervision, community service hours, and a fine. A middle offender with fewer than 110 points is under the jurisdiction of the county and may receive community supervision, community service hours, a fine, and in some cases, a period of confinement. A middle offender with more than 110 points is generally committed to the JRA, with a minimum commitment range of 8 weeks. A serious offender must be committed to the JRA. The minimum commitment range for an offender committed to JRA is 8-12 weeks. An offender who commits A+ offense receives a commitment range of 180-240 weeks.

### C. Disposition Alternatives:

1. *Deferred Adjudication*: Some offenders are eligible for deferred adjudication. The adjudication and disposition for an offense may be deferred on the condition that the offender meet conditions of community supervision. If the offender complies with all conditions imposed by the court, the case is dismissed with prejudice and is not included in the offender's criminal history.

2. *Option B*: Minor/first offenders and middle offenders with less than 110 points may receive an "option B" disposition of up to 12 months of community supervision, up to 150 hours of community service, and/or a fine of up to \$100, and for middle offenders with less than 110 points, up to 30 days of confinement.

A middle offender with more than 110 points is eligible for an "option B" suspended sentence. The court imposes the standard range disposition of confinement to the JRA and then suspends that disposition on the condition that the offender comply with conditions of community supervision and serve up to 30 days of confinement at the county level.

3. *Manifest Injustice*: "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would pose a serious and clear danger to society. If the court finds that the standard range disposition would effectuate a manifest injustice, the court may impose a disposition outside the standard range. A manifest injustice disposition is available for minor/first, middle, and serious offenders.

4. *Special Sex Offender Disposition Alternative (SSODA)*: Certain juvenile sex offenders may be ordered into treatment in the community and be placed on community supervision for up to two years rather than serve a longer period in confinement. If the offender fails to comply with the treatment and supervision requirements, the offender is returned to custody. The state pays for the costs of initial evaluation and treatment of juvenile sex offenders who receive a SSODA disposition.

5. *Firearms Enhancements*: A juvenile found to have committed the offense of minor in possession of a firearm must receive a determinate disposition of 10 days of confinement and up to 12 months of community supervision. A juvenile who is armed with a firearm during the commission of a violent offense or certain other offenses must receive a firearms enhancement of 90 days of confinement.



led to the standard range disposition. A firearm enhancement may run concurrently with a term of confinement imposed in the same disposition for other offenses.

**Juvenile Offender Basic Training Camp:** A juvenile offender who is subject to a disposition of not more than 78 weeks and who did not commit a violent offense or sex offense is eligible for a 120-day basic training camp option. Upon successful completion of the basic training camp, the offender may serve the remaining term of confinement on intensive parole in the community.

### III. Parental Involvement

When a juvenile is charged with an offense, the court must send the charging information to the juvenile's parents in order to notify them of the charges and to require them to appear and be parties to the arraignment proceedings. Parents are not required to appear at other hearings involving the juvenile.

Communications between an alleged juvenile offender and the juvenile's attorney are privileged, and the court may not compel the attorney to disclose those communications. This privilege does not extend to communications made to the juvenile's attorney while the juvenile's parent is present.

### IV. Restitution

A juvenile offender is required to make restitution payments to compensate any person who suffered loss or damage as a result of the juvenile's offense. The court must determine the restitution amount in the disposition hearing and must include the payment of restitution in the order of disposition. The court does not have to impose restitution if the court determines that the juvenile lacks the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution over a 10-year period.

### V. Parole

When a juvenile is released from confinement after serving the disposition term ordered by the court, the Department of Social and Health Services (DSHS) may require the juvenile to comply with a program of parole. Parole may extend for a period no longer than 18 months, except for certain sex offenders whose period of parole must be 24 months. The parole program must include requirements that the juvenile refrain from possessing firearms or deadly weapons and refrain from committing new offenses. In addition, the parole program may require the juvenile to comply with a number of conditions, including requirements to undergo available medical or psychiatric treatment, pursue a course of study or vocational training, and report to a parole officer.

The secretary of the DSHS has authority to issue an arrest warrant for a juvenile who escapes from an institution. The secretary does not have explicit power to issue an arrest warrant for a juvenile offender who absconds from parole supervision or fails to meet conditions of parole.

## VI. Appeals

A juvenile disposition that is outside the standard range disposition may be appealed. The court of appeals may uphold a disposition outside the standard range only if it finds that the reasons considered by the juvenile court judge clearly and convincingly support a finding of manifest injustice and that the sentence imposed was not clearly excessive or clearly too lenient. If the court of appeals determines that the manifest injustice finding was not clearly and convincingly supported by the reasons of the juvenile court judge, the court of appeals must remand the case for disposition within the standard range or for community supervision without confinement, if appropriate.

While an appeal is pending, the juvenile offender may not be committed or detained for a period in excess of the standard range for the offense, or 60 days, whichever is longer. Once this period expires, the court may impose conditions on the release of the offender pending the appeal.

## VII. Juvenile Records

A juvenile adjudicated of an offense may petition the court to vacate its order of adjudication and order the record sealed or destroyed. The court must grant the motion to seal if the court finds that two years have elapsed and that no criminal proceeding is pending against the person. If the court grants the motion, the proceedings are treated as if they never occurred.

A subsequent adjudication of a juvenile offense or crime nullifies a sealing order. A subsequent conviction for an adult felony nullifies the sealing order on records of prior juvenile adjudications for class A offenses or sex offenses.

A person may petition the court to destroy the person's juvenile record. The court may grant the motion if the court finds that the person is at least 23 years old, has not subsequently been convicted of a felony, has no criminal proceeding currently pending, and has never been found guilty of a serious offense. A person who is 18 and whose entire criminal history consists of one diversion may have the record destroyed if two years have elapsed since the completion of the diversion agreement.

## VIII. Miscellaneous Juvenile Provisions

### A. Community-Based Rehabilitation and Sanctions:

"Community-based sanctions" and "community-based rehabilitation" are components of "community supervision," which is a disposition that the court may impose on an adjudicated youth. Community-based sanctions include a fine not to exceed \$100 and community service hours. Community-based rehabilitation includes attendance at school, counseling, treatment programs, and other informational or educational classes.

**B. Courtesy Disposition Hearings:** If a juvenile is adjudicated in one county, but resides in another, the case may be transferred to the offender's county of residence for the disposition hearing. The jurisdiction that receives

the transfer of the juvenile is responsible for the costs of the transfer.

C. Violations of Orders to Pay Monetary Penalties or Perform Service: When a juvenile offender violates an order of the court, the court may impose additional sanctions on the juvenile for that violation, including confinement for up to 30 days. If the violation is of a court order to pay fines, penalties, or restitution, or to perform community service hours, the court may assess confinement at a rate of one day per each \$25 or eight hours owed.

#### IX. Adult Provisions

A. Inclusion of Juvenile Adjudications in an Adult's Criminal History: Some, but not all, juvenile criminal history is included in an adult's offender score, which is used to determine the adult's sentence. Juvenile adjudications for sex offenses and serious violent offenses are always included in an adult offender's criminal history. Prior juvenile adjudications for other class A felony offenses are counted if the offender was 15 or older at the time of the offense. Prior adjudications for class B and C offenses or serious traffic offenses are counted if the offender was 15 or older at the time of the juvenile offense, and less than 23 at the time of the adult offense for which he or she is being sentenced.

Prior juvenile adjudications that are entered or sentenced on the same date count only as only one prior offense, except that if the offenses were violent offenses with separate victims, the offenses are counted separately.

Under the adult sentencing code, a "first-time offender" is eligible for a waiver of the standard range sentence on the condition that the offender meet certain conditions. A "first-time offender" is an adult who is convicted of a felony that is not a violent or sex offense or certain drug offenses. A juvenile adjudication before the age of 15 does not count as a prior felony except for sex offenses and serious violent offenses.

B. Special Sex Offender Sentencing Alternative (SSOSA) Costs: SSOSA is a discretionary sentencing option allowing a judge to give an eligible sex offender a suspended sentence, including sex offender treatment in the community, if doing so will benefit the community and the offender. The costs of sex offender treatment under a SSOSA sentence must be paid by the offender.

C. Housing and Education of Offenders Under the Age of 18: An offender under the age of 18 who is convicted in adult criminal court and sentenced to the Department of Corrections (DOC) may be transferred to the JRA under certain circumstances. The Secretary of the DOC makes an independent assessment of the offender to determine whether the offender's needs and correctional goals would be better served if the offender is housed in a juvenile facility. If the Secretary of the DSHS accepts the offender, the offender may reside in a JRA facility until age 21. The secretaries must review the placement regularly with a determination based on the offender's maturity and sophistication, behavior and

progress, security needs, and program and treatment alternatives.

The DOC may place an inmate in education programs designed to allow the inmate to achieve a high school diploma or the equivalent to the extent those programs are available. There is no statutory requirement for the DOC to provide a program of basic education to an inmate who is under the age of 18.

#### X. Miscellaneous Provisions

A. Reckless Endangerment in the First Degree: A person is guilty of reckless endangerment in the first degree if the person recklessly discharges a firearm from a motor vehicle or the immediate area of a motor vehicle in a manner that creates a substantial risk of death or serious physical injury. First-degree reckless endangerment is a class B felony and is not included as a "violent offense."

B. Violence Reduction and Drug Enforcement Account: Revenue from various taxes, including taxes on alcohol, cigarettes, and carbonated beverage syrup, is deposited into the violence reduction and drug enforcement account (VRDE). The account funds a variety of programs, such as substance abuse treatment and juvenile rehabilitation programs, including incarceration.

A portion of the motor vehicle excise tax (MVET) is distributed to local governments through the county criminal justice assistance account and the municipal criminal justice assistance account. Distributions to these accounts may grow only at the rate of inflation. MVET revenues in excess of this cap are deposited into the general fund.

#### Summary:

##### I. Juvenile Court Jurisdiction

A. Automatic Decline: The category of juvenile offenders who are subject to automatic decline to adult court is expanded to include any juvenile who is 16 or 17 and alleged to have committed: robbery in the first degree; rape of a child in the first degree; drive-by shooting; burglary in the first degree if the offender has a prior adjudication; or any violent offense if the offender was armed with a firearm.

B. Decline Hearings: A mandatory decline hearing must be held for an escape charge if the juvenile is serving a minimum disposition to age 21.

C. Civil Infractions: The juvenile court is specifically granted jurisdiction over juveniles alleged to have committed a civil infraction.

##### II. Disposition Standards

A. Offense Category Schedule: The following changes are made to the offense category schedule:

- Reckless endangerment in the first degree is renamed "drive-by shooting" and is increased from a B to a B+ offense.
- Vehicle prowling is increased from a D to a C offense.
- Obstructing a law enforcement officer is increased from an E to a D offense.
- Rape of a child in the second degree is increased from a B to a B+ offense.

child molestation in the first degree is increased from B+ to an A- offense.

child molestation in the second degree is increased from a C+ to a B offense.

residential burglary, theft of a firearm, and possession of a stolen firearm are specifically ranked as B offenses.

**Standard Range Disposition:** The current structure for determining an offender's standard range disposition is replaced with a new disposition grid that is based on two factors: the seriousness of the current offense and the number of prior adjudications. Prior felony adjudications count as one point and prior misdemeanor and gross misdemeanor adjudications count as 1/4 point in determining the number of prior adjudications. The age of the offender, the recency of prior adjudications, and the distinction between minor/first, middle, and serious offenses are no longer considered in determining the standard range disposition.

Based on the current offense seriousness level and the number of prior adjudications, a juvenile offender will receive a standard range disposition of either local sanctions or commitment to the Juvenile Rehabilitation Administration (JRA).

**Local Sanctions:** Local sanctions may consist of up to 30 days of confinement, up to 12 months of community supervision, up to 150 hours of community service hours, up to a \$500 fine. A misdemeanor or gross misdemeanor offender receives a standard range disposition of local sanctions, regardless of prior adjudications.

**Commitment to the JRA:** The minimum JRA commitment range is increased to 15-36 weeks, except that a 16, or 17 year old offender adjudicated of an A- offense receives a standard range disposition of 30-40 weeks. An offender who commits an A+ offense must be committed to the JRA for 180 weeks up to age 21.

#### **C. Disposition Alternatives:**

**Deferred Adjudication:** Deferred adjudication is replaced with deferred disposition. If a juvenile pleads guilty or after a determination of guilt is made upon a finding of the record, the court may continue the case for disposition for up to one year and place the juvenile on community supervision. If the juvenile complies with all conditions of the deferral, the juvenile's adjudication is vacated and the case is dismissed with prejudice. A juvenile is not eligible for a deferred disposition if the current offense is a sex offense or violent offense, the juvenile's criminal history consists of any felony, or the juvenile has a prior deferred disposition, or more than two diversions.

**Option B:** The "option B" disposition alternative, which allows a judge to suspend a disposition of confinement to the JRA and place the offender in the community supervision, is eliminated.

**Manifest Injustice:** The seriousness of prior adjudicated offenses may be considered by the court for the

purposes of imposing a disposition outside the standard range.

**4. Special Sex Offender Disposition Alternative (SSODA):** If the court determines that an offender is eligible for the SSODA, the court may impose and then suspend a manifest injustice disposition in order to provide a greater incentive for the offender to comply with the conditions of the SSODA disposition. The length of community supervision that may be imposed on an offender given a SSODA disposition is changed to at least two years.

**5. Firearms Enhancements:** The disposition that the court must impose for an offender who is found in violation of minor in possession of a firearm is changed to at least 10 days. The firearm enhancement imposed on a juvenile who is armed with a firearm during the commission of an offense is changed to apply to any felony offense, other than firearm-related offenses. The enhancement is six months for a class A felony, four months for a class B felony, and two months for a class C felony. The firearm enhancement must run consecutively to any other term of confinement imposed for other offenses.

**6. Juvenile Offender Basic Training Camp:** Eligibility for the basic training camp is changed to those offenders who receive a disposition of up to 65 weeks of confinement.

**7. Chemical Dependency Disposition Alternative (CDDA):** A new disposition option is created for certain juveniles who are chemically dependent and who will benefit from a chemical dependency disposition. An offender with a standard range disposition of local sanctions or commitment to JRA for 15-36 weeks and who has not committed an A- or B+ offense is eligible for this disposition. The court may suspend the standard range disposition on the condition that the offender undergo available outpatient or inpatient drug/alcohol treatment and comply with conditions of community supervision. The court may impose up to 30 days of confinement. The sum of confinement time and inpatient treatment may not exceed 90 days.

### **III. Parental Involvement**

A new goal of the juvenile justice system is to encourage and require parents to participate when juvenile offender proceedings are brought against their child. The court is required to give a parent notice of pertinent hearings, must require the parent to attend, and may hold the parent in contempt of court for failing to attend.

A limited testimonial privilege is established for communications made between a child and an attorney in the presence of a parent. A parent may not be examined concerning a communication between the parent's child and the child's attorney made in the presence of the parent and after the child's arrest.

A juvenile who is detained as an alleged offender may be released only to a responsible adult or the DSHS.

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#### IV. Restitution

In a disposition hearing, the court may set a hearing for a later date to determine the amount of restitution owed, rather than making that determination at the disposition hearing. The court may no longer decline to impose restitution on an offender who does not have the means to make full or partial restitution.

#### V. Parole

Certain sex offenders may receive up to 36 months of parole if the secretary of the Department of Social and Health Services (DSHS) determines that the extended parole period is necessary in the interests of public safety, or to meet the ongoing needs of the juvenile. The conditions of parole that may be imposed on a juvenile offender who is released from custody are expanded. The DSHS must base a decision to place an offender on parole on an assessment of an offender's risk of re-offending. The DSHS must prioritize parole resources to provide supervision to moderate to high-risk offenders.

An intensive supervision program is created as part of parole for up to the 25 percent highest-risk offenders. An offender placed on intensive supervision must comply with all conditions of parole and meet added conditions, including more frequent contact with the community case manager. The DSHS must implement an intensive supervision program no later than January 1, 1999, and must report annually to the Legislature on progress in meeting the goals of the intensive supervision program.

The secretary of the DSHS is given authority to issue arrest warrants for juveniles who abscond from parole or fail to meet parole conditions.

#### VI. Appeals

If the court of appeals determines that the juvenile court's reasons for finding a manifest injustice are not clearly and convincingly supported, the court of appeals must remand the case for a disposition within the standard range. The time restrictions that apply when detaining a juvenile pending appeal are removed. The juvenile may be detained for the entire appeal period, even if this period exceeds the standard range disposition for the offense.

#### VII. Juvenile Records

The requirements for the sealing of a juvenile's records are changed. Juvenile records relating to class A or sex offenses may not be sealed. Juvenile records relating to class B offenses may be sealed if the offender has spent 10 years in the community without committing an offense. Juvenile records relating to class C offenses may be sealed after the offender has spent five years in the community without committing an offense. A juvenile record for any offense may not be sealed until the offender has paid full restitution. The subsequent charging of an adult felony nullifies a sealing order on the offender's juvenile records.

The ability to destroy the records of a juvenile offender, other than an offender who only has a history of one diversion, is removed.

#### VIII. Miscellaneous Juvenile Provisions

##### A. Community-Based Rehabilitation and Sanction

The definition of "community-based sanction" is amended to increase the amount of the fine to \$500. The definition of "community-based rehabilitation" is amended to include employment and literacy classes.

B. Courtesy Disposition Hearings: The ability of a court to transfer a disposition hearing to the jurisdiction where the juvenile offender resides is removed.

C. Violations of Orders to Pay Monetary Penalties or Perform Service: The provision specifying that violations of orders to pay monetary penalties or to perform community service are converted to confinement at a rate of one day for each \$25 or eight hours is removed.

D. Community Juvenile Accountability Act: A community juvenile accountability grant program is created to enable local communities to develop and administer community-based programs designed to reduce youth violence and juvenile crime. Local governments may submit proposals to the DSHS for grants to fund community-based juvenile accountability and intervention programs that meet specified guidelines. Community juvenile accountability programs that are funded must comply with information collection requirements and reporting requirements.

E. Definition of "Adjudication": "Adjudication" is defined to mean the same as "conviction" under the adult sentencing reform act. The terms must be construed identically and may be used interchangeably.

F. Guardian Ad Litem: A guardian ad litem is not required in a proceeding in a court of limited jurisdiction where the alleged offender is 16 or 17 years old and the alleged offense is a traffic, fish, boating, or game offense or a traffic or civil infraction.

#### IX. Adult Provisions

A. Inclusion of Juvenile Adjudications in an Adult Criminal History: An adult's criminal history includes juvenile adjudications, regardless of the age of the juvenile at the time of the offense. Prior juvenile adjudications entered or sentenced on the same date are counted as separate offenses, unless they encompass the same criminal conduct.

A juvenile adjudication for a felony offense committed before the age of 15 counts as a prior offense in determining whether an adult offender is a "first-time offender."

B. Special Sex Offender Sentencing Alternatives (SSOSA) Costs: The state must pay the costs of the initial examination and treatment of an offender under adult court jurisdiction who is less than 18 and who is given a SSOSA sentence.

C. Housing and Education of Offenders Under the Age of 18: An offender under the age of 18 who is convicted in adult criminal court and sentenced to the Department of Corrections (DOC) must be placed in a housing unit, or a portion of a housing unit, separate from adult inmates. The offender may be housed in an intensive management unit or administrative segregation.

if necessary for the safety or security of the offender the staff. An offender under the age of 18 who is confined in adult criminal court and sentenced to jail must be placed in a jail cell that does not contain adult offenders.

The DOC must provide a program of education to an inmate under the age of 18 who has not met high school general equivalency degree (GED) requirements. The DOC must provide the inmate with a choice of a curriculum that will assist the inmate in achieving either a diploma or a GED.

#### **X. Miscellaneous Provisions**

**A. Reckless Endangerment in the First Degree:** Reckless endangerment in the first degree is renamed "drive-by shooting" and added to the definition of "violent offense."

**B. Violence Reduction and Drug Enforcement Account:** Motor vehicle excise tax revenues in excess of the allocation cap must be deposited into the violence reduction and drug enforcement account (VRDE). Funds from the VRDE account may be appropriated to reimburse local governments for costs associated with implementing criminal justice legislation, including this act.

**C. Repealers:** A provision requiring the Sentencing Guidelines Commission to submit a report on juvenile disposition standards to the Legislature by December 1, 1996, is repealed. A provision establishing the Juvenile Disposition Standards Commission, which ceased to exist on June 30, 1996, is repealed. A provision requiring prosecutors to develop prosecutorial filing standards in juvenile cases based on a 1993 report is repealed.

**D. Studies:** The University of Washington must develop standards to measure the effectiveness of chemical dependency treatment programs for juvenile offenders by January 1, 1998. The JRA must use the standards to prioritize expenditures for treatment.

The Sentencing Guidelines Commission must review conviction data for the past 10 years and submit a proposed bill that ranks all unranked felony offenses for which there have been convictions.

The Institute for Public Policy must develop standards for measuring the effectiveness of community juvenile accountability programs by January 1, 1998, and evaluate the costs and benefits of programs funded under the Community Juvenile Accountability Act by December 1, 1998 and December 1, 2000. The Institute is required to study sentencing revisions of this act starting January 1, 2001 and report its findings by July 1, 2002. The Institute must develop a uniform definition of "recidivism" by December 31, 1997.

#### **Notes on Final Passage:**

House	70	28	
Senate	39	10	(Senate amended)
House			(House refused to concur)

#### **Conference Committee**

Senate	45	0
House	98	0

Effective: July 1, 1997

July 1, 1998 (Sections 10, 12, 18, 24-26, 30, 38, & 59)

### **EHB 3901**

#### **PARTIAL VETO**

C 58 L 97

Implementing the federal personal responsibility and work opportunity reconciliation act of 1996.

By Representatives Cooke, Boldt, McDonald, Alexander, Bush, Smith, Mielke, Talcott, Cairnes, Reams, Johnson, Huff, Lambert, Sheahan, Mulliken, Parlette, Backlund, Koster, D. Sommers, D. Schmidt, Schoesler, Wensman and Skinner.

Senators Deccio, Wood, Benton, Stevens, Rossi, Zarelli, Swecker, Long, McCaslin, Strannigan, Hochstatter, Oke, Horn, Newhouse, Johnson, Sellar, McDonald, Hale, Prince, Morton, Anderson, Roach, Finkbeiner, Winsley, Schow, West.

#### **Senate Committee on Health & Long-Term Care**

**Background:** Prior to January 1997, Washington operated a welfare program for low-income families with children called Aid to Families with Dependent Children (AFDC). If a family had children under the age of 18 and met income and resource standards, the family was eligible for assistance. The family had a legal entitlement to monthly cash payments and medical coverage through the Medicaid program. This assistance continued as long as the family met the eligibility criteria.

In 1996, the U.S. Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This federal welfare reform legislation replaced the former AFDC assistance program for low-income families with a new program called the Temporary Assistance for Needy Families (TANF) program. Under the federally funded welfare system, the states must implement the reforms required by the Congress.

The new federal welfare reform law fundamentally changes the way low-income families will receive assistance from the federal and state governments. The individual entitlement to assistance is ended and replaced with a maximum five years of assistance during a person's lifetime. A capped federal block grant is provided to a state in lieu of an uncapped federal funding formula based on the state's welfare caseload. An individual receiving assistance under the new TANF program is required to work. States are required to suspend the drivers' licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue child support.

The Congress stated the following goals of welfare reform in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996:

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JULY 1 1998

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STATE OF WASHINGTON  
BY *[Signature]*  
CLERK

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION TWO

IN RE THE PERSONAL RESTRAINT OF  
JUSTIN HEGNEY,  
Petitioner.

CAUSE NO. 34085-2-II

CERTIFICATE OF SERVICE

I, Julia Dods, certify and declare, that on the 20<sup>th</sup> day of April, 2006, I deposited copies of the attached Reply Brief of Petitioner, in the United States Mail, with proper postage attached, addressed to:

Michelle Luna-Green  
Pierce County Prosecuting Attorney's Office  
930 Tacoma Ave. South, Room 946  
Tacoma WA 98402-2171

Donna Mullen  
Assistant Attorney General  
Office of the Attorney General  
PO Box 40116  
Olympia, WA. 98504-0116

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

4-20-06 Seattle, WA  
DATE AND PLACE

*Julia Dods*  
JULIA DODS

FILED  
COURT OF APPEALS  
DIVISION TWO

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STATE OF WASHINGTON

BY SP  
DEPUTY

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION TWO

IN RE THE PERSONAL RESTRAINT OF

JUSTIN HEGNEY,

Petitioner.

CAUSE NO.

PETITIONER'S EXHIBITS

PETITIONER'S EXHIBITS

ORIGINAL



## Exhibits

1	Juvenile Information, 00-8-02128-1, 9/1/00
2	Order on Declination of Juvenile Jurisdiction, 2/20/01
3	Motion for Reconsideration, 3/1/01
4	Minute Entry from 3/2/01
5	Findings of Fact and Conclusions of Law on Declination Hearing, 3/2/01
6	Ruling Denying Review, 8/21/01
7	Information, 01-1-01150-4, 3/2/01
8	Findings of Fact and Conclusions of Law on CrR 3.5 Hearing, 9/14/01
9	Plaintiff's Proposed Jury Instructions, 1/9/02
10	Defendant's Proposed Instructions, 1/9/02
11	Court's Instructions to the Jury, 1/28/02
12	Verdict Form A, 1/28/02
13	Judgment and Sentence, 2/22/02
14	Court of Appeals Decision, 4/22/04
15	Denial of Review, 11/30/04
16	Mandate, 12/17/04
17	Varela Probation Counselor Report, 1/29/01
18	Klingbeil Report, 1/17/01
19	CPS records, 2/23/01
20	Declaration of Kristina Myers
21	Declaration of Jeramy Hegney
22	Declaration of Wayne Fricke
23	Declaration of Karil Klingbeil
24	Declaration of Neil M. Fox (and chart)
25	Declaration of Robert Briggs, Ph.D (and c.v.)
26	DOC Document re: Good Time
27	HB 1924



## Exhibit 1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE  
JUVENILE COURT

STATE OF WASHINGTON,

Plaintiff,

vs.

JUSTIN M. HEGNEY,  
DOB: 6-5-85  
JUVIS #: 766240-R030

Respondent.

CAUSE NO. **00 8 02128 1**

INFORMATION

FILED

**CO-RESPONDENTS:**

**MANUEL JOSE HERNANDEZ**

**CHARLES ANDREW NEELY**

**JAMAR JAY SPENCER**

**JESSE REPHEAL HILL** **00 8 02129 9**

**JERMAINE TERRON BEAVER**

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JUSTIN HEGNEY of the crime of MURDER IN THE FIRST DEGREE, a Felony, committed as follows:

That JUSTIN HEGNEY, in Pierce County, Washington, on or about the 19th day of August, 2000, did unlawfully, while committing or attempting to commit the crime of ROBBERY IN THE FIRST DEGREE, and in the course of or in furtherance of said crime or in immediate flight therefrom, JUSTIN HEGNEY, or an accomplice, did cause the death of Erik Michael Toews, a human being, not a participant in such crime, on or about the 25th day of August, 2000, contrary to RCW 9A.32.030(1)(c) and 9A.08.020, and against the peace and dignity of the State of Washington.

AND IN THE ALTERNATIVE

I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do accuse

**ORIGINAL**

1 JUSTIN HEGNEY of the crime of MURDER IN THE SECOND DEGREE, a Felony,  
2 committed as follows:

3 That JUSTIN HEGNEY, in Pierce County, Washington, on or about the  
4 19th day of August, 2000, did unlawfully, while committing or  
5 attempting to commit the crime of ASSAULT IN THE SECOND DEGREE, and in  
6 the course of and in furtherance of said crime or in immediate flight  
7 therefrom, DID BEAT ERIK MICHAEL TOEWS WITH FEET, FISTS, AND A STICK,  
8 thereby causing the death of Erik Michael Toews, a human being, not a  
9 participant in said crime, on or about the 25th day of August, 2000,  
10 contrary to RCW 9A.32.050(1)(b) and 9A.08.020, and against the peace  
11 and dignity of the State of Washington.

12 Dated this 31 day of August, 2000.

13 JOHN W. LADENBURG  
14 Prosecuting Attorney in and for  
15 said County and State.

16 By: Donna Masumoto  
17 DONNA MASUMOTO  
18 Deputy Prosecuting Attorney  
19 WSBA No. 19700  
20  
21  
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## Exhibit 2

FILED  
DEPT. 18  
IN OPEN COURT

FEB 20 2001

Pierce County Clerk  
By [Signature]  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE  
JUVENILE COURT

STATE OF WASHINGTON

Plaintiff.

CAUSE NO. 00-8-02128-1

vs.

JUSTIN MICHAEL HEGNEY,  
DOB: 6/5/85  
JUVIS #: 766240-R030

ORDER ON DECLINATION OF  
JUVENILE JURISDICTION

Respondent.

ORDER

The above-entitled matter came on regularly for hearing on the motion of the Prosecuting Attorney pursuant to RCW 13.40.110. The State was represented by DONNA MASUMOTO and ROSALIE MARTINELLI. The Respondent was present and represented by his attorney, WAYNE FRICKE. The Court was fully advised in all matters. It is hereby

ORDERED that the State's motion for the declination of juvenile court jurisdiction is GRANTED. The respondent shall be and hereby is REMANDED to the adult criminal justice system for arraignment. It is further

ORDERED that the PIERCE COUNTY SHERIFF shall transport the respondent to the Pierce County Jail for presentation of findings March 21, 2001.

DATED this 20th day of February, 2001.

Presented By:

Donna Masumoto  
Dep. Prosecutor #19750

[Signature]  
JUDGE

ORDER ON DECLINING  
JUVENILE COURT JURISDICTION - 1

[Signature]  
Respondent's attorney

Office of the Prosecuting Attorney  
Juvenile Division  
5501 Sixth Avenue  
Tacoma, Washington 98406-2697  
Telephone: (253) 798-3400

### Exhibit 3

MAR 01 2001

PIERCE COUNTY, WASHINGTON  
TED RUTTI, County Clerk

By \_\_\_\_\_  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE  
JUVENILE COURT

STATE OF WASHINGTON,

Plaintiff,

vs.

JUSTIN HEGNEY,

Respondent.

No. 00-8-02561-8,  
00-8-02128-1

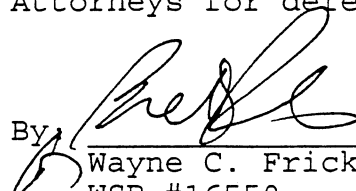
MOTION FOR  
RECONSIDERATION

COMES NOW the respondent herein, Justin Hegney, by and through his attorney, Wayne C. Fricke of the Law Offices of Monte E. Hester, Inc., P.S., and requests that the court reconsider its decision declining jurisdiction in this matter.

THIS MOTION is based on the records and files herein and the fact that the Court improperly placed the burden on the respondent to demonstrate that treatment was not available in the juvenile system, as well as the other elements of the Kent standards.

DATED this 1<sup>ST</sup> day of March, 2001.

LAW OFFICES OF MONTE E.  
HESTER, INC. P.S.  
Attorneys for defendant

By   
Wayne C. Fricke  
WSB #16550

#### Exhibit 4



# IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 00-8-02128-1

## MEMORANDUM OF JOURNAL ENTRY

vs.

HEGNEY, JUSTIN MICHAEL

Page: 2 of 2

Judge: KAREN L. STROMBOM

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### MINUTES OF PROCEEDING

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Judicial Assistant: PATTI HICKEY  
Start Date/Time: 03/02/01 2:00 PM

Court Reporter: GARY HAMILTON

March 02, 2001 02:00 PM

This matter is before the court for presentment of the findings, conclusions and order on the declination hearing. All parties are present. Mr. Fricke had filed a motion for reconsideration. The court responded that a motion for reconsideration would not be held.

Mr. Fricke addresses the court regarding the request to present a motion to reconsider. Court responds to the request and indicates that an appeal/discretionary review can be filed. Court enters findings of fact and conclusions of law on both cause numbers.

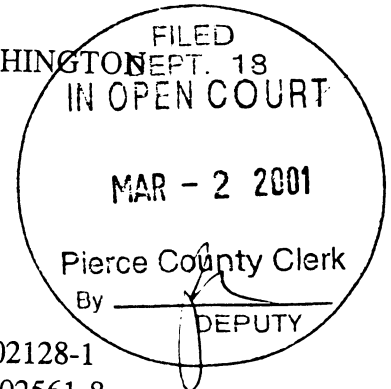
Prosecutors request to proceed with arraignment in Superior Court. Mr. Gregorich presents information to the court. Mr. Fricke waives reading of the information, enters pleas of not guilty. Court finds probable cause and enters pleas under Superior Court Cause No: 01 1 01150 4. Mr. Gregorich and Mr. Fricke address conditions of release and where the defendant is to be housed. Discussion regarding preliminary conference with the co-defendant cases on Hunt and Hernandez. This matter will be set for March 9, 2001 at 10:30 a.m. Conditions of release: bail \$500,000.00, travel restricted to Pierce County, no contact with victim's family. Mr. Fricke advises the court that it has been brought to his attention that there has been threats made against Justin Hegney by Mr. Hernandez and requests an order to keep them separate and for extra security. Orders entered.

End Date/Time: 03/02/01 2:45 PM

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## Exhibit 5

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE  
JUVENILE COURT



STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 00-8-02128-1  
00-8-02561-8

vs.

JUSTIN MICHAEL HEGNEY,  
DOB: 6-5-85  
JUVIS #: 766240-R030 & R040

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON  
DECLINATION HEARING**

Respondent.

THIS MATTER came before the Honorable KAREN L. STROMBOM for a Declination Hearing on the 12th through the 20th day of February, 2001, upon Informations charging the Respondent with Murder in the First Degree and Unlawful Possession of a Controlled Substance. The Respondent was present and represented by his attorney, Wayne Fricke. The State was represented by Donna Masumoto and Rosalie Martinelli, deputy prosecuting attorneys. The Court observed the demeanor and heard the testimony of the witnesses, has considered the arguments of counsel, and has been duly advised in all matters. The Court makes the following Findings of Fact and Conclusions of Law pursuant to the eight factors stated in Kent vs. United States, 383 U.S. 541, 12 L.Ed.2d 84, 86 S.Ct. 1045 (1966).

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
ON DECLINATION HEARING - 1**

ORIGINAL

Office of Prosecuting Attorney  
Juvenile Division  
5501 Sixth Avenue  
Tacoma, Washington 98406-2697  
(253) 798-3400 / Fax: 798-4019

1  
2  
3 FINDINGS OF FACT  
4

5 I.  
6

7 The first Kent factor requires consideration of the seriousness of the alleged offense to  
8 the community and whether the protection of the community requires declination. There is no  
9 dispute that the incident involving the death of Erik Toews is an extremely serious offense.  
10 The protection of the community requires declination, as will be further discussed below in  
11 Finding of Fact VIII.  
12

13 II.  
14

15 The second Kent factor is whether the alleged offense was committed in an aggressive,  
16 violent, premeditated or willful manner. The facts support the conclusion that the offense was  
17 committed against Erik Toews in an aggressive, violent and willful manner. This factor  
18 weighs in support of declining jurisdiction.  
19

20 III.  
21

22 The third Kent factor is whether the alleged offense was against persons or against  
23 property, with greater weight being given to offenses against persons. Erik Toews died as a  
24 result of the offense. There can be no greater injury than death. This factor weighs in favor  
25 of declination.  
26

27 FINDINGS OF FACT AND  
28 CONCLUSIONS OF LAW  
ON DECLINATION HEARING - 2

1  
2 IV.

3 The fourth Kent factor is the prosecutive merit of the complaint. The Court finds that  
4 the complaint has prosecutive merit. There is evidence that the Respondent knew the group  
5 was out to beat someone up, and that the Respondent had participated in prior assaultive  
6 incidents in which items had been taken from the assault victims. The Respondent stated  
7 during a taped interview with the police that he had kicked Erik Toews during the beating and  
8 robbery of Mr. Toews. This factor weighs in favor of declination.  
9  
10

11  
12 V.

13 The fifth Kent factor is the desirability of trial and disposition of the entire offense in  
14 one court when a respondent's associates are adults. Two of the Respondent's associates are  
15 presently set for trial in adult court, and three are presently set for trial in juvenile court.  
16 This factor is neutral and neither weighs in favor of, nor in opposition to, declination.  
17  
18

19 VI.

20 The sixth Kent factor is the sophistication and maturity of the juvenile determined by  
21 consideration of his home, environmental situation, emotional attitude and pattern of living.  
22 The Respondent asserted his maturity in many aspects of his life, and also evidenced  
23 immaturity in other aspects. While the Respondent has never held a job, paid bills or lived on  
24 his own at his own expense, the inquiry into maturity and sophistication does not end there.  
25

26 The Respondent's personal life, largely unknown to his parents, involved the use of  
27

28 FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
ON DECLINATION HEARING - 3

1 alcohol, cigarettes, marijuana and sexual activity. The Respondent consciously refused to  
2 participate in school and attended only for its social aspects. He chose to be a disrupter in  
3 class, chose to ignore classroom rules, and chose negative friends. He was himself a negative  
4 friend to others. He was a leader in certain groups and a follower in others. He has a history  
5 in school of harassing others. Outside of school, he had been involved in group activities that  
6 were illegal. He was not following the rules of either parent. The Respondent's actions are  
7 those of a young person who wanted to be an adult and who did things he considered to be  
8 adult. This factor weighs in favor of declination.  
9  
10  
11  
12  
13

## 14 VII.

15 The seventh Kent factor is the record and previous juvenile history of the Respondent.  
16 The Respondent has had only one prior contact with the juvenile justice system which arose  
17 from his possession of marijuana on school grounds. With regard to this offense, the  
18 Respondent signed a diversion agreement on August 17, 2000, the day before the incident  
19 involving Ricardo Mendoza, and two days before the incident that led to Erik Toews's death.  
20 While the Respondent does not have significant prior contacts with the juvenile justice system,  
21 and arguably this factor weighs in favor of retaining juvenile jurisdiction, this court is giving  
22 little weight to this factor, as it appears that the Respondent's illegal actions were escalating  
23 rapidly at the time of the attack on Erik Toews on August 19, 2000.  
24  
25  
26

27 FINDINGS OF FACT AND  
28 CONCLUSIONS OF LAW  
ON DECLINATION HEARING - 4

VIII.

The eighth Kent factor is the prospects for the adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile through services and facilities currently available to the juvenile court. The Court finds that the Respondent has been a danger to the community and has been involved with dangerous friends. The Respondent's ability to manipulate situations and people, as evidenced through the testimony of his teachers and the testimony of Karil Klingbeil, causes great concern to this court. The Respondent has many issues that require treatment; and this is shown through his school records, his actions and his choices. The Court finds that the Respondent's treatment needs would not be appropriately dealt with in JRA, the juvenile institution. The Court finds that the public would not be adequately protected should the Respondent be retained in the juvenile justice system even until he turns 21.

The Respondent's expert witness, Karil Klingbeil, testified that the Respondent is not a danger to society because of his lack of prior similar incidents and his lack of involvement in the attack on Erik Toews. The Court does not find Ms. Klingbeil's testimony credible in this regard. The foundation for this testimony was not supported by the evidence presented in court.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
ON DECLINATION HEARING - 5

1  
2 CONCLUSIONS OF LAW

3 I.

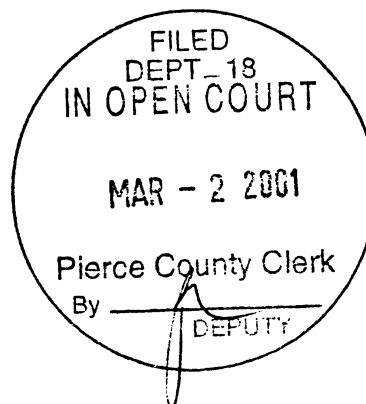
4 The Kent factors, taken as a whole, weigh in favor of the declination of juvenile court  
5 jurisdiction. Declination would be in the best interest of the public, and the Court accordingly  
6 orders that juvenile jurisdiction be declined over the Respondent.  
7

8 DONE IN OPEN COURT this 2nd day of March, 2001.

9  
10 Karen L. Strombom  
KAREN L. STROMBOM,  
11 JUDGE

12 Presented by:

13 Donna Masumoto  
14 DONNA MASUMOTO,  
15 Deputy Prosecuting Attorney  
WSBA #19700



16 Approved as to Form:

17  
18 Wayne Fricke  
19 WAYNE FRICKE,  
20 Attorney for Respondent  
WSBA # 16550

21  
22  
23  
24  
25  
26  
27 FINDINGS OF FACT AND  
28 CONCLUSIONS OF LAW  
ON DECLINATION HEARING - 6



## Exhibit 6

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JUSTIN MICHAEL HEGNEY,

Petitioner.

Consol. Nos. 27148-6-II  
27151-6-II

RULING DENYING REVIEW

FILED  
COURT OF APPEALS  
DIVISION II  
01 AUG 21 PM 4:01  
STATE OF WASHINGTON  
BY *[Signature]*  
DEPUTY

Justin Michael Hegney seeks review of a Pierce County Superior Court order declining juvenile court jurisdiction. Hegney was 15 years old at the time the State filed charges. He is charged with first degree murder pursuant to the felony murder statute, RCW 9A.32.030(1)(c), and trial is presently set for September 17, 2001.

### FACTS

The charges are based on the murder of Eric Toews by seven young men, ranging in age from 11 to 19. The crime occurred on August 19, 2000. The State's evidence provides the following account of events. Early in the evening, Hegney went to a barbecue at Terrance Hunt's house. Also present were the other young men who would later participate in the murder. Hegney left the barbecue, but returned when Hunt called him and told him "[w]e're going out tonight," which meant that they were going to find someone to beat up. Report of Proceedings, Feb.12, 2001, at 100. Hegney and the six others left Hunt's house at about 10 P.M. They approached one man, but did not

COPY TO CLIENT  
FOR YOUR INFORMATION  
DATE 8-28-01

attack him because the street was too busy. The group then spotted Eric Toews, who was on foot. One member of the group asked Toews for a cigarette. While Toews was distracted, Hunt punched Toews in the head, knocking him to the ground. The group then joined in the attack against Toews. Some punched him in the face, and Hegney and others kicked Toews while he was on the ground. The group stole Toews' wallet, keys, some marijuana and a drug pipe. At one point Toews was able to get up and tried to run away, but he was caught and beaten again. Hunt noticed that someone was watching the assault from a second floor window in a nearby apartment. The group fled and met back at Hunt's house. Hunt bragged about doing "28 knee drops" on the victim's head. Report of Proceedings, Feb. 12, 2001, at 105. Hegney and another youth went outside and smoked the marijuana they had stolen from Toews, using his pipe.

Toews suffered repeated blows to the head, face, trunk and limbs. He was unconscious when he was taken to the hospital, did not regain consciousness, and died on August 25, 2000. The autopsy revealed that he died of blunt head injury. After reading in the newspaper that Toews had died, several in the group met Hegney at his house, and discussed alibis in case the police caught them. Hegney and another youth went to Puyallup to stay with Hegney's father, while others went elsewhere to hide out. On August 28, 2000, police detectives arrested Hegney and advised him of his *Miranda*<sup>1</sup> rights. Hegney confessed to participating in the assault. He admitted that he had kicked Toews while Toews was on the ground, and while at least one other group

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

member was going through Toews' pockets. The police determined that Hegney was a suspect in three other assaults.

*Wright Park "Slug Bug" Assault Robbery:* Hegney also told police that he participated in an unrelated assault and robbery which occurred in Wright Park, where Hegney kicked the victim in the side while the victim was on the ground. This assault also involved Hunt and Robert Hernandez, both of whom participated in the Toews assault.

*Mendoza Assault:* On the night prior to the Toews' assault, Ricardo Mendoza was assaulted by a group of nine individuals. The 14-year-old victim picked out Hegney from a photo lineup, identifying Hegney as the person who initially contacted him. He said Hegney whistled loudly and made a call on his cell phone. Then Hegney's companions came around the corner of the building and tried to circle Mendoza and his two friends. Hernandez grabbed Mendoza and assaulted him by slapping him in the head.

*Skateboard Assault:* Elisha Thompson, a member of the group who did not participate in the assault of Toews, told police about another assault that occurred in late July or early August 2000. Thompson said she was with Hegney, Hernandez, Hunt and a fourth person. The group was talking about "beating someone up" who had caused them problems in the past. Report of Proceedings, Feb.12, 2001, at 112. They saw the victim riding on a bicycle, and Hunt approached him and hit him with a skateboard. Thompson told police that the rest of the group then started assaulting the victim.

At the time of the declination hearing, Hegney had also been charged with unlawful possession of a controlled substance. While he was in custody for the Toews murder, juvenile detention officers searched his room and discovered pills concealed in a soapbox. Hegney was the sole occupant of the room. The pills were controlled substances that were prescribed to another youth in the same pod.

#### PROCEDURE

The declination hearing occurred on February 12-15, 2001. The State introduced Hegney's school records, which reflect a three-year history of disciplinary referrals for assaulting and harassing other students, substantial insubordination, failure to follow school rules, and drug and alcohol abuse. Hegney's probation officer testified that Hegney denies the need for any treatment or services, including drug or alcohol treatment. The probation officers who conferred on Hegney's case unanimously concluded that declination was appropriate.

Hegney presented the testimony of Karil Klingbeil, a professor at the University of Washington school of social work, who evaluated Hegney at the request of the defense. She testified that in her opinion "justice would be better served by keeping Justin in the Juvenile system where he could get the kind of clinical treatment that he requires." Report of Proceedings, Feb. 15, 2001, at 504. She did not believe he was a danger to society, being of the opinion that Hegney had not participated in the attack on Erik Toews ("[H]e's been adamant all along that he did not administer any of the blows nor was he close to the deceased. He's been very clear about that." Report of Proceedings, Feb. 15, 2001, at 526), and had not participated in similar incidents.

The juvenile court declined jurisdiction, finding that treatment of Hegney's problems in the juvenile system would be inadequate to ensure the safety of the community. Hegney contends that the court erred because the State failed to produce evidence supporting the trial court's findings, justifying review under RAP 2.3(b)(2). He also claims that the court substantially departed from the usual and accepted course of judicial proceedings in that it placed the burden on him to demonstrate the *Kent*<sup>2</sup> factors weighed in his favor, justifying review under RAP 2.3(b)(3).<sup>3</sup>

As to the first contention, the court spent four days in hearing this issue, taking testimony from 21 witness. It considered all eight of the required *Kent* factors:

(1) the seriousness of the alleged offense and whether the protection of the community requires declination; (2) whether the offense was committed in an aggressive, violent, premeditated or willful manner; (3) whether the offense was against persons or only property; (4) the prosecutive merit of the complaint; (5) the desirability of trial and disposition of the entire case in one court, where the defendant's alleged accomplices are adults; (6) the sophistication and maturity of the juvenile; (7) the juvenile's criminal history; and (8) the prospects for adequate protection of the public and rehabilitation of the juvenile through services available in the juvenile system.

*State v. Furman*, 122 Wn.2d 440, 447 (1993). The court is not required to find that all eight factors have been proven, *State v. Toomey*, 38 Wn. App. 831, 834 (1984), *review*

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<sup>2</sup> *Kent v. United States*, 383 U.S. 541 (1966).

<sup>3</sup> RAP 2.3(b)(2) and (3) authorize this court to grant review:

(2) If the superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act; or

(3) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court.

*denied*, 103 Wn.2d 1012 (1985), and its decision is reviewed for an abuse of discretion. *Furman*, 122 Wn.2d at 835.

Hegney challenges only two of the eight *Kent* factors, the first and the eighth, contending that the evidence does not support the court's determination that Hegney cannot be adequately treated in the juvenile system, and that he must be treated as an adult for the protection of society.

Hegney's claim is without merit. There was evidence that (1) the murder was an extremely violent act, and that Hegney showed little remorse for it; (2) it followed several other assaults carried out in a similar manner; (3) Hegney had a three-year history of assaultive, threatening and extremely insubordinate behavior at school; (4) his teachers found him to be manipulative and calculating and thought he was at times very mean to his classmates; (5) he had drug and alcohol dependencies; (6) he lacked empathy; and (7) he did not believe he had any problems or needed treatment. His own expert testified that he needed three to five years of treatment. The probation officer who testified said that a probationary period in the community was also necessary to ensure that Hegney was able to sustain the gains made in treatment when he was not in a controlled situation.<sup>4</sup> Under the circumstances, it cannot be said that the court probably

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<sup>4</sup> Contrary to Hegney's contention, the probation counselor's opinion about the length of time needed for treatment can provide substantial evidence to support the trial court's determination, even in the face of different recommendations from other experts. See *Toomey*, 38 Wn. App. at 837, 387 n.8.

abused its discretion in finding that treatment and public safety concerns warranted declination.<sup>5</sup>

Likewise unpersuasive is the claim that the court placed the burden on Hegney to demonstrate the *Kent* factors weighed in his favor. Nothing in the record supports this contention. The court noted that it had not been provided with a psychological evaluation, but it did not suggest that it was Hegney's duty to provide one.

Hegney having failed to satisfy the prerequisites of RAP 2.3(b)(2) and (3), it is hereby

ORDERED that review is denied.

DATED this 21<sup>st</sup> day of August, 2001.

  
\_\_\_\_\_  
Court Commissioner

cc: Wayne C. Fricke  
Donna Y. Masumoto  
Barbara Corey-Boulet  
Hon. Karen Strombom  
Pierce County Superior Court  
Cause numbers: 00-8-02128-1, 00-8-02561-8

Director of Division of Juvenile Rehabilitation

---

<sup>5</sup> Hegney also complains that the trial court should have found that the fifth *Kent* factor favored retention because declination of Hegney would not result in trial and disposition of the entire offense in one court. The court found this to be a neutral factor because no decision it made would result in a single trial. That determination was not a probable abuse of discretion. Moreover, characterizing the fifth factor as Hegney proposes would not have affected the decision since all of the other factors supported declination. Hegney does not raise a challenge to the other six *Kent* factors dealing with the seriousness of the alleged offense, the aggressiveness of the offense, the offense being against a person, the prosecutive merit of the complaint, the sophistication and maturity of the juvenile, and the juvenile's criminal history.



## Exhibit 7

FILED  
IN COUNTY CLERK'S OFFICE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON MAR - 2 2001 P.M.

IN AND FOR THE COUNTY OF PIERCE

PIERCE COUNTY, WASHINGTON  
TED RUTH, COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. **01-1 01150 4**

vs.

INFORMATION

JUSTIN MICHAEL HEGNEY,

Defendant.

DOB: 06/05/1985

SEX: MALE

RACE: WHITE

SS#: UNKNOWN

SID#: UNKNOWN

DOL#: UNKNOWN

CO-DEF: ROBERT ANTHONY HERNANDEZ 00-1-04055-7

CO-DEF: TERRANCE LASHAWN HUNT 00-1-04054-9

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JUSTIN MICHAEL HEGNEY of the crime of MURDER IN THE FIRST DEGREE, committed as follows:

That JUSTIN MICHAEL HEGNEY, in Pierce County, on or about the 19th day of August, 2000, did unlawfully and feloniously, while committing or attempting to commit the crime of ROBBERY IN THE FIRST DEGREE, and in the course of or in furtherance of said crime or in immediate flight therefrom, JUSTIN MICHAEL HEGNEY or an accomplice, did cause the death of Erik M. Toews, a human being, not a participant in such crime, on or about the 25th day of August, 2000, contrary to RCW 9A.32.030(1)(c) and 9A.08.020, and against the peace and dignity of the State of Washington.

AND IN THE ALTERNATIVE

I, GERALD A. HORNE, Prosecuting Attorney aforesaid, do accuse JUSTIN MICHAEL HEGNEY of the crime of MURDER IN THE SECOND DEGREE, committed as follows:

That JUSTIN MICHAEL HEGNEY, in Pierce County, on or about the 19th day of August, 2000, did unlawfully and feloniously, while committing or attempting to commit the crime of ASSAULT IN THE SECOND DEGREE, and in the course of and in furtherance of said crime or in immediate flight therefrom, JUSTIN MICHAEL HEGNEY or an accomplice, did beat Erik M. Toews with feet, fists and a stick,

INFORMATION - 1

ORIGINAL

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (253) 708 7400

1 thereby causing the death of Erik M. Toews, a human being, not a participant in said crime, on or about the  
2 25th day of August, 2000, contrary to RCW 9A.32.050(1)(b) and 9A.08.020, and against the peace and  
3 dignity of the State of Washington.

4  
5 DATED this 2nd day of March, 2001.

6 TACOMA POLICE DEPT CASE  
7 WA02703

GERALD A. HORNE  
Prosecuting Attorney in and for said County  
and State.

8 wsg  
9

10 By: 

11 W. STEPHEN GREGORICH  
12 Deputy Prosecuting Attorney  
13 WSB#: 5642  
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## Exhibit 8

FILED  
DEPT. 18  
IN OPEN COURT

SEP 14 2001

Pierce County Clerk  
By  DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 01-1-01150-4

vs.

JUSTIN MICHAEL HEGNEY,

Defendant.

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
ON CrR 3.5 HEARING**

THIS MATTER came before the Honorable Karen L. Strombom, Judge of the above entitled court, for a CrR 3.5 hearing on June 18, 2001, upon an Information charging the Defendant with Murder in the First Degree. The Defendant was present and represented by his attorney, Wayne Fricke. The State was represented by Deputy Prosecuting Attorneys W. Stephen Gregorich and Donna Masumoto. The Court observed the demeanor and heard the testimony of the witnesses. The Court has considered the arguments of counsel and has been duly advised in all matters. The Court enters the following findings of fact and conclusions of law pursuant to CrR 3.5.

FINDINGS OF FACT

I.

On the evening of August 28, 2000, the Defendant was placed under arrest by Detective William Foster of the Tacoma Police Department, who then advised the Defendant of his Miranda rights using a pre-printed Advisement of Rights form. The Defendant stated that he understood these rights. The Defendant was transported to the fourth floor of the County-City Building in Tacoma.

II.

At the County-City Building, Detective David DeVault of the Tacoma Police Department

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
ON CrR 3.5 HEARING - 1

**ORIGINAL**

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (253) 798-7400

1 re-advised the Defendant of his rights from the same pre-printed form that Detective Foster had  
2 used. The Defendant stated that he understood his rights, and that he would waive his rights and  
3 make a statement to the police.  
4

5 III.

6 The Defendant then made a statement to the police. At no time during the making of this  
7 statement did the Defendant ask to stop the interview or refuse to answer questions. Nor did the  
8 Defendant ask for an attorney or appear confused.  
9

10 IV.

11 The Defendant then agreed to give a taped statement. Detective DeVault again advised  
12 the Defendant of his Miranda rights. The Defendant again acknowledged that he understood his  
13 rights, and he agreed to waive his rights and give a taped statement.  
14

15 V.

16 The Defendant then gave a taped statement to the police. At no time during this taped  
17 statement did the Defendant ask to stop the interview or refuse to answer questions. Nor did the  
18 Defendant ask for an attorney or appear confused.  
19

20 VI.

21 The Defendant was not coerced, threatened, or forced in any way to waive his rights or to  
22 make either his initial or his taped statement.  
23

24 VII.

25 On August 23, 2000, five days prior to his arrest, the defendant made statements to  
26 Detective Fredrickson while in the area of 8th and Ainsworth Street in Tacoma.  
27  
28

VIII.

The Defendant was not a special education student while at Stahl Junior High School. His school work reflected that he is of average intelligence.

From the foregoing findings of fact, the Court makes the following conclusions of law.

CONCLUSIONS OF LAW

I.

Detective Foster properly advised the Defendant of his Miranda rights. Detective DeVault also properly advised the Defendant of his Miranda rights prior to the taking of his initial statement and prior to the taking of his taped statement.

II.

Based on the totality of the circumstances, the Defendant made a knowing, intelligent and voluntary waiver of his constitutional rights after each advisement of his rights.

III.

The Defendant's initial and taped statements made to police on August 28, 2000, are admissible at trial pursuant to CrR 3.5.

IV.

The State has not met its burden of proof that the Defendant's statements made to Detective Fredrickson were made in a setting in which a reasonable person in the Defendant's position would have felt free to leave. These statements are not admissible.

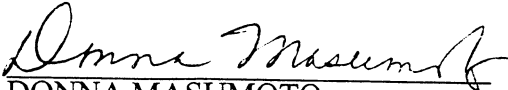
V.

RCW 13.40.140(2) requires the court or its agent to advise a juvenile's parent of the juvenile's right to counsel. The police department is not an agency of the court, and the statute did not require the police to advise the Defendant's parent at the time of the Defendant's arrest of the right to counsel.


DONE IN OPEN COURT this 14<sup>th</sup> day of September, 2001.

  
KAREN L. STROMBOM,  
JUDGE

Presented by:

  
DONNA MASUMOTO,  
Deputy Prosecuting Attorney  
WSBA #19700

Approved as to Form:

  
WAYNE FRICKE,  
Attorney for Defendant  
WSBA # 16550



## Exhibit 9



01-1-01150-4 15936083 PLPIN 02-04-02

CLK207 2955 000.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

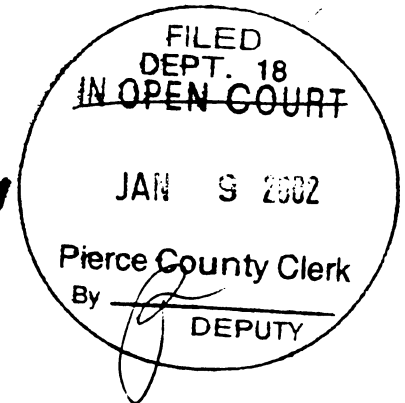
Plaintiff,

vs.

JUSTIN HEGNEY and  
JESSE HILL,

Defendants.

NO. ~~01-1-01989-1~~  
01-1-01989-1



***PLAINTIFF'S PROPOSED INSTRUCTIONS  
TO THE JURY  
(With Citations)***

Before the Honorable Karen L. Strombom  
Judge of the Superior Court  
Department No. 18

Donna Masumoto  
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COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JUSTIN HEGNEY and  
JESSE HILL,

Defendants.

NO. 01-1-01150-4  
01-1-01989-1

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***COURT'S INSTRUCTIONS TO THE JURY***

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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KAREN L. STROMBOM, JUDGE

## INSTRUCTION NO. \_\_\_\_

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendants of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the

testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

## INSTRUCTION NO. \_\_\_\_

The defendants have entered a plea of not guilty. That plea puts in issue every element of the crimes charged. The State is the plaintiff, and has the burden of proving each element of the crimes beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

## INSTRUCTION NO. \_\_\_\_

A separate crime is charged against one or more of the defendants in each count. The charges have been joined for trial. You must decide the case of each defendant or each crime charged against that defendant separately. Your verdict on any count as to any defendant should not control your verdict on any other count or as to any other defendant.

## INSTRUCTION NO. \_\_\_\_

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.



## INSTRUCTION NO. \_\_\_\_

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses.

Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

## INSTRUCTION NO. \_\_\_\_

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

INSTRUCTION NO. \_\_\_\_

You may not consider an admission or incriminating statement made out of court by one defendant as evidence against a codefendant.

WPIC 6.42

## INSTRUCTION NO. \_\_\_\_

A person commits the crime of Murder in the First Degree when he or an accomplice commits or attempts to commit the crime of Robbery in the First Degree, and in the course of or in furtherance of such crime or in immediate flight from such crime, he or another participant causes the death of a person other than one of the participants.

## INSTRUCTION NO. \_\_\_\_

To convict the defendant, JUSTIN HEGNEY, of the crime of Murder in the First Degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 19th day of August, 2000, ERIK TOEWS was assaulted and suffered injuries that resulted in his death on or about the 25th day of August, 2000;
- (2) That the defendant or an accomplice was committing or attempting to commit the crime of Robbery in the First Degree;
- (3) That the defendant or an accomplice caused the death of ERIK TOEWS in the course of and in furtherance of such crime or in immediate flight from such crime;
- (4) That ERIK TOEWS was not a participant in the crime; and
- (5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

## INSTRUCTION NO. \_\_\_\_

To convict the defendant, JESSE HILL, of the crime of Murder in the First Degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 19th day of August, 2000, ERIK TOEWS was assaulted and suffered injuries that resulted in his death on or about the 25th day of August, 2000;
- (2) That the defendant or an accomplice was committing or attempting to commit the crime of Robbery in the First Degree;
- (3) That the defendant or an accomplice caused the death of ERIK TOEWS in the course of and in furtherance of such crime or in immediate flight from such crime;
- (4) That ERIK TOEWS was not a participant in the crime; and
- (5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

## INSTRUCTION NO. \_\_\_\_

A person commits the crime of Robbery in the First Degree when in the commission of a robbery or in immediate flight therefrom he or an accomplice is armed with a deadly weapon, or displays what appears to be a deadly weapon, or inflicts bodily injury.

## INSTRUCTION NO. \_\_\_\_

A person commits the crime of robbery when he or an accomplice unlawfully and with intent to commit theft thereof takes personal property, not belonging to the defendant, from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of anyone. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear.



INSTRUCTION NO. \_\_\_\_

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. \_\_\_\_

Bodily injury, physical injury or bodily harm means physical pain or injury, illness or an impairment of physical condition.

## INSTRUCTION NO. \_\_\_\_

A person commits the crime of Murder in the Second Degree when he or an accomplice commits or attempts to commit the crime of Assault in the Second Degree, and in the course of and in furtherance of such crime or in immediate flight from such crime, he or she or an accomplice causes the death of a person other than one of the participants.

WPIC 27.03 (modified to include accomplice)

## INSTRUCTION NO. \_\_\_\_

To convict the defendant, JUSTIN HEGNEY, of the crime of Murder in the Second Degree as charged in the alternative in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 19th day of August, 2000, ERIK TOEWS was assaulted and suffered injuries that resulted in his death on or about the 25th day of August, 2000;
- (2) That the defendant or an accomplice was committing or attempting to commit the crime of Assault in the Second Degree;
- (3) That the defendant or an accomplice caused the death of ERIK TOEWS in the course of and in furtherance of such crime or in immediate flight from such crime;
- (4) That ERIK TOEWS was not a participant in the crime; and
- (5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

WPIC 27.04 (modified in section (1) to include reference to injuries resulting in death on a later date; modified to include reference to accomplice in section (2))

## INSTRUCTION NO. \_\_\_\_

To convict the defendant, JESSE HILL, of the crime of Murder in the Second Degree as charged in the alternative in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 19th day of August, 2000, ERIK TOEWS was assault and suffered injuries that resulted in his death on or about the 25th day of August, 2000;
- (2) That the defendant or an accomplice was committing or attempting to commit the crime of Assault in the Second Degree;
- (3) That the defendant or an accomplice caused the death of ERIK TOEWS in the course of and in furtherance of such crime or in immediate flight from such crime;
- (4) That ERIK TOEWS was not a participant in the crime; and
- (5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

## INSTRUCTION NO. \_\_\_\_

A person commits the crime of Assault in the Second Degree when he or an accomplice intentionally assaults another and thereby recklessly inflicts substantial bodily harm or assaults another with a deadly weapon.

## INSTRUCTION NO. \_\_\_\_

A person commits the crime of Attempted Assault in the Second Degree when, with intent to commit that crime, he or she does any act which is a substantial step toward the commission of that crime.

WPIC 100.01

INSTRUCTION NO. \_\_\_\_

A substantial step is conduct which strongly indicates a criminal purpose and which is more than mere preparation.

WPIC 100.05



## INSTRUCTION NO. \_\_\_\_\_

An assault is an intentional touching or striking of another person that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

## INSTRUCTION NO. \_\_\_\_

Deadly weapon means any weapon, device, instrument, substance or article, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily injury.

## INSTRUCTION NO. \_\_\_\_

Substantial bodily harm means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or that causes a fracture of any bodily part.

## INSTRUCTION NO. \_\_\_\_\_

Evidence has been introduced in this case on the subject of three incidents that occurred on August 17, 2000, involving Richard Rice, Elmer Joe and Michael Gour for the limited purpose of determining whether Defendant Jesse Hill is guilty or not guilty of the robbery charges arising from these incidents. You must not consider this evidence for any purpose concerning Defendant Justin Hegney.

## INSTRUCTION NO. \_\_\_\_

To convict the defendant, JESSE HILL, of the crime of Robbery in the First Degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 17th day of August, 2000, the defendant or an accomplice unlawfully took personal property, not belonging to the defendant or accomplice, from the person or in the presence of RICHARD RICE;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person;

(4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice inflicted bodily injury; and

(6) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

## INSTRUCTION NO. \_\_\_\_

To convict the defendant, JESSE HILL, of the crime of Robbery in the First Degree as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 17th day of August, 2000, the defendant or an accomplice unlawfully took personal property, not belonging to the defendant or accomplice, from the person or in the presence of ELMER JOE;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person;

(4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice inflicted bodily injury; and

(6) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

## INSTRUCTION NO. \_\_\_\_

To convict the defendant, JESSE HILL, of the crime of Robbery in the First Degree as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 17th day of August, 2000, the defendant or an accomplice unlawfully took personal property, not belonging to the defendant or accomplice, from the person or in the presence of MICHAEL GOUR;
- (2) That the defendant or an accomplice intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person;
- (4) That the force or fear was used by the defendant or accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That in the commission of these acts or in immediate flight therefrom the defendant inflicted bodily injury; and
- (6) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

## INSTRUCTION NO. \_\_\_\_

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence, these instructions, and six verdict forms; verdict forms A and B for Defendant JUSTIN HEGNEY, and verdict forms A, B, C, D, and E for Defendant JESSE HILL.

When completing the verdict forms, you will first consider the crime of Murder in the First Degree as charged. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form A the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form A.

If you find a defendant guilty on verdict form A, do not use verdict form B. If you find a defendant not guilty of the crime of Murder in the First Degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will then consider the lesser crime of Murder in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form B the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form B.

If you find the defendant guilty of the crime of Murder but have a reasonable doubt as to which of two or more degrees of that crime the defendant is guilty, it is your duty to find the defendant not guilty on verdict form A and to find the defendant guilty of the lesser degree on verdict form B.

You must then fill in the blank provided in each of the remaining verdict forms, C, D and E with



respect to Defendant JESSE HILL, with the words "not guilty" or the word "guilty", according to the decision you reach.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the proper form of verdicts to express your decision. The presiding juror will sign it and notify the judicial assistant, who will conduct you into court to declare your verdict.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JUSTIN HEGNEY,

Defendant.

NO. 01-1-01150-4

**VERDICT FORM A**

We, the jury, find the defendant \_\_\_\_\_ (Not Guilty or Guilty) of the  
crime of Murder in the First Degree as charged in Count I.

\_\_\_\_\_  
PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JUSTIN HEGNEY,

Defendant.

NO. 01-1-01150-4

**VERDICT FORM B**

We, the jury, having found the defendant not guilty of the crime of Murder in the First Degree as charged, or being unable to unanimously agree as to that charge, find the defendant, JUSTIN HEGNEY, \_\_\_\_\_ (Not Guilty or Guilty) of the crime of Murder in the Second Degree as charged in the alternative in Count I.

\_\_\_\_\_  
PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JESSE HILL,

Defendant.

NO. 01-1-01989-1

**VERDICT FORM A**

We, the jury, find the defendant, JESSE HILL, \_\_\_\_\_ (Not Guilty or Guilty) of the crime of Murder in the First Degree as charged in Count I.

\_\_\_\_\_  
PRESIDING JUROR

## IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

## IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JESSE HILL,

Defendant.

NO. 01-1-01989-1

**VERDICT FORM B**

We, the jury, having found the defendant, JESSE HILL, not guilty of the crime of Murder in the First Degree as charged, or being unable to unanimously agree as to that charge, find the defendant \_\_\_\_\_ (Not Guilty or Guilty) of the crime of the crime of Murder in the Second Degree as charged in the alternative in Count II.

\_\_\_\_\_  
PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JESSE HILL,

Defendant.

NO. 01-1-01989-1

**VERDICT FORM C**

We, the jury, find the defendant, JESSE HILL, \_\_\_\_\_ (Not Guilty or Guilty) of the crime of Robbery in the First Degree as charged in Count II.

\_\_\_\_\_  
PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JESSE HILL,

Defendant.

NO. 01-1-01989-1

**VERDICT FORM D**

We, the jury, find the defendant, JESSE HILL, \_\_\_\_\_ (Not Guilty or  
Guilty) of the crime of Robbery in the First Degree as charged in Count III.

\_\_\_\_\_  
PRESIDING JUROR

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JESSE HILL,

Defendant.

NO. 01-1-01989-1

**VERDICT FORM E**

We, the jury, find the defendant, JESSE HILL, \_\_\_\_\_ (Not Guilty or Guilty) of the crime of Robbery in the First Degree as charged in Count IV.

\_\_\_\_\_  
PRESIDING JUROR



## INSTRUCTION NO. \_\_\_\_

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

## INSTRUCTION NO. \_\_\_\_

It is a defense to a charge of Murder in the First or Second Degree based upon committing or attempting to commit the crimes of Robbery in the First Degree or Assault in the Second Degree that the defendant:

(1) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(2) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury; and

(3) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(4) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

This defense must be established by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

## INSTRUCTION NO. \_\_\_\_

Evidence has been introduced in this case on the subject of an incident that occurred at the Duck Pond at Wright Park only for the purpose of determining whether on August 19, 2000, Defendant Justin Hegney had knowledge of a plan to beat and take property from Erik Toews when Erik Toews was confronted. You must not consider this evidence for any purpose concerning Defendant Jesse Hill.

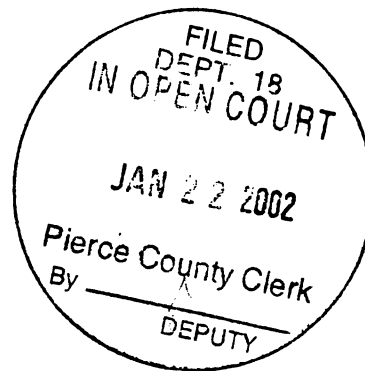
Instruction No. \_\_\_\_\_

Evidence has been introduced in this case on the subject of Jesse Hill's presence at the scene of the assault on Eric Toew's for the limited purpose of impeaching the credibility of Jamar Spencer. You must not consider this evidence for any other purpose.

INSTRUCTION NO. 19A

A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and the disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

Recklessness also is established if a person acts intentionally or knowingly.

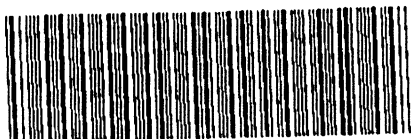


INSTRUCTION NO. \_\_\_\_

A person commits the crime of Attempted Robbery in the First Degree when, with intent to commit that crime, he or she does any act which is a substantial step toward the commission of that crime.

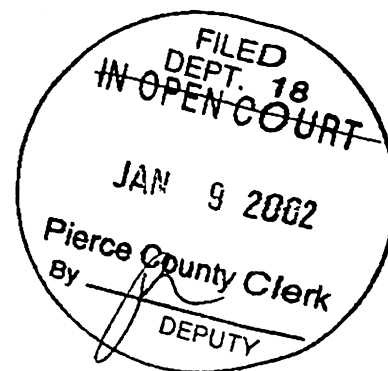
WPIC 100.01

**Exhibit 10**



01-1-01150-4 15936091 DFPIN 02-04-02

COPY



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JUSTIN HEGNEY,

Defendant.

No. 01-1-01150-4

DEFENDANT'S PROPOSED  
INSTRUCTIONS TO THE JURY

DATED this \_\_\_\_ day of January, 2002.

LAW OFFICES OF MONTE E.  
HESTER, INC., P.S.  
Attorneys for Defendant

By:

Wayne C. Fricke  
WSB #16550



JURY INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

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deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

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The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the

judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

JURY INSTRUCTION NO. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to reexamine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

JURY INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless you find during your deliberations that it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

JURY INSTRUCTION NO. 4

Evidence may be either direct or circumstantial.

Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

JURY INSTRUCTION NO. 5

Evidence that a witness has been convicted of a crime may be considered by you in deciding what weight or credibility should be given to the testimony of the witness and for no other purpose. .

JURY INSTRUCTION NO. 6

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to any other defendant.

All of the instructions apply to each defendant unless a specific instruction states that it applies only to a specific defendant.



JURY INSTRUCTION NO. 7

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness information, together with the factors already given you for evaluating the testimony of any other witness.

JURY INSTRUCTION NO. 8

The testimony of an alleged accomplice, given on behalf of the plaintiff, should be subjected to careful examination in the light of other evidence in the case, and should be acted upon with great caution. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth.

JURY INSTRUCTION NO. 9

You may not consider an admission or incriminating statement made out of court by one defendant as evidence against a codefendant.

JURY INSTRUCTION NO. 10

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

JURY INSTRUCTION NO. 11

A person is an accomplice in the commission of a crime, if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

1. solicits, commands, encourages, or requests another person to commit the crime; or
2. aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

Knowledge of an accomplice that the principal intended to commit a particular crime does not impose strict liability for any and all offenses that follow. An accomplice must have the purpose to promote or facilitate the particular conduct that forms the basis for the charge and the accomplice is not liable for conduct that does not fall within this purpose.

WPIC 10.51 (modified)

State v. Roberts, 142 Wn.2d 471, 14 P.3d 713 (2000)

State v. Sarausad II, \_\_\_ Wn.App \_\_\_, 34 P.3d 916, 921 (2001)

JURY INSTRUCTION NO. 12

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

WPIC 10.02 (modified)

JURY INSTRUCTION NO. 13

A person commits the crime of murder in the first degree when he or an accomplice commits or attempts to commit robbery and in the course of or in furtherance of such crime or in immediate flight from such crime he or another participant causes the death of a person other than one of the participants.

JURY INSTRUCTION NO. 14

A person commits the crime of robbery when he or she unlawfully and with intent to commit theft thereof takes personal property from the person of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear.



JURY INSTRUCTION NO. 15

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

JURY INSTRUCTION NO. 14

A person commits the crime of robbery in the first degree when in the commission of a robbery or in immediate flight therefrom he or she is armed with a deadly weapon or displays what appears to be a firearm or other deadly weapon or inflicts bodily injury.

JURY INSTRUCTION NO. 17

To constitute murder, there must be a causal connection between the death of a human being and the criminal conduct of a defendant so that the act done was a proximate cause of the resulting death.

The term "proximate cause" means a cause which, in a direct sequence, unbroken by any new independent cause, produces the death, and without which the death would not have happened.

There may be more than one proximate cause of a death.

JURY INSTRUCTION NO. 18

If you are satisfied beyond a reasonable doubt that the acts of the defendant were a proximate cause of the death of the deceased, it is not a defense that the conduct of the deceased or another may also have been a proximate cause of the death.

If a proximate cause of the death was a later independent intervening act of the deceased or another which the defendant, in the exercise of ordinary care, could not reasonably have anticipated as likely to happen, the defendant's acts are superseded by the intervening cause and are not a proximate cause of the death.

However, if in the exercise of ordinary care, the defendant should reasonably have anticipated the intervening cause, that cause does not supersede defendant's original acts and defendant's acts are a proximate cause. It is not necessary that the sequence of events or the particular injury be foreseeable. It is only necessary that the death fall within the general field of danger which the defendant should have reasonably anticipated.

JURY INSTRUCTION NO. 19

To convict the defendant of the crime of murder in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 19th day of August, 2000, Erik Toews was killed;

(2) That the defendant was attempting to commit robbery in the first degree;

(3) That the defendant or an accomplice caused the death of Erik Toews in the course of or in furtherance of robbery;

(4) That Erik Toews was not a participant in the crime; and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

JURY INSTRUCTION NO. 20

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime charged, the defendant may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of murder in the first degree necessarily includes the lesser crimes of robbery in the first degree.

When a crime has been proven against a person and there exists a reasonable doubt as to which of two or more degrees or crimes that person is guilty, he or she shall be convicted only of the lowest degree or crime.

JURY INSTRUCTION NO. 21

To convict the defendant of the crime of robbery in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 19th day of August, 2000, the defendant or an accomplice unlawfully took personal property from the person of another;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's use or threatened use of immediate force, violence or fear of injury to that person;

(4) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5) That in the commission of these acts or in immediate flight therefrom the defendant was armed with a deadly weapon or inflicted bodily injury; and

(6) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.



JURY INSTRUCTION NO. 22

A person commits the crime of murder in the second degree when he or she commits assault in the second degree and in the course of and in furtherance of such crime or in immediate flight from such crime he or an accomplice causes the death of a person other than one of the participants.

JURY INSTRUCTION NO. 23

An assault is an intentional touching or striking with unlawful force, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the act did not actually intend to inflict bodily injury.

WPIC 35.50

JURY INSTRUCTION NO. 24

A person commits the crime of assault in the second degree when he intentionally assaults another and thereby recklessly inflicts substantial bodily harm or assaults another with a deadly weapon.

WPIC 35.10

JURY INSTRUCTION NO. 25

Substantial bodily harm means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or that causes a fracture of any bodily part.

JURY INSTRUCTION NO. 24

To convict the defendant of the crime of murder in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 19th day of August, 2000, Erik Toews was killed;

(2) That the defendant was attempting to commit assault in the second degree;

(3) That the defendant or an accomplice caused the death of Erik Toews in the course of or in furtherance of assault in the second degree;

(4) That Erik Toews was not a participant in the crime; and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

JURY INSTRUCTION NO. 27

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime charged, the defendant may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of murder in the second degree necessarily includes the lesser crimes of assault in the second degree and assault in the third degree.

When a crime has been proven against a person and there exists a reasonable doubt as to which of two or more degrees or crimes that person is guilty, he or she shall be convicted only of the lowest degree or crime.

JURY INSTRUCTION NO. 28

To convict the defendant of the crime of assault in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 19th day of August, 2000, the defendant or an accomplice intentionally assaulted Erik Toews;

(2) That the defendant or an accomplice thereby recklessly inflicted substantial bodily harm on Erik Toews; and

(3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

JURY INSTRUCTION NO. 29

A person commits the crime of assault in the third degree when under circumstances not amounting to assault in the second degree he with criminal negligence causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm or with criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering.



JURY INSTRUCTION NO. 30

To convict the defendant of the crime of assault in the third degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 19th day of August, 2000, the defendant caused bodily harm to Erik Toews;

(2) That the physical injury was caused by a weapon or other instrument or thing likely to produce bodily harm;

(3) That the defendant acted with criminal negligence;  
and

(4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

JURY INSTRUCTION NO. 31

You will also be furnished with special verdict forms. If you find the defendant not guilty do not use the special verdict forms. If you find the defendant guilty, you will then use the special verdict forms and fill in the blanks with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict forms "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you have a reasonable doubt as to the question, you must answer "no".

JURY INSTRUCTION NO. 32

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence, these instructions, and five verdict forms, A-1, A-2, B-1, B-2, and B-3.

When completing the verdict forms, you will first consider the crime of murder in the first degree as charged in the information. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form A-1 the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in verdict form A-1.

If you find the defendant guilty on verdict form A-1, do not use verdict forms A-2 or B-1, B-2 or B-3. If you find the defendant not guilty of the crime of murder in the first degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser included

crime of robbery in the second degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form A-2 the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in verdict form A-2.

You will next consider the charge of murder in the second degree as charged in the alternative. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form B-1 the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in verdict form B-1.

If you find the defendant guilty on verdict form B-1, do not use verdict form B-2 or B-3. If you find the defendant not guilty of the crime of murder in the second degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of assault in the second degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form B-2 the words "not guilty" or the word "guilty", according to the decision you reach.

If you find the defendant guilty of the crime of assault but have a reasonable doubt as to which of two or more degrees of that crime the defendant is guilty, it is your duty to find the defendant not guilty on verdict form B-2 and to find the defendant guilty of the lesser included crime of assault in the third degree on verdict form B-3.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the proper form of verdict or verdicts to express your decision. The presiding juror will sign it and notify the bailiff, who will conduct you into court to declare your verdict.

WPIC 155.00

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, )  
 )  
 Plaintiff, ) NO. 01-1-01150-4  
 )  
 v. ) VERDICT FORM A-1  
 )  
 JUSTIN HEGNEY, )  
 )  
 Defendant. )  
 )

We, the jury, find the defendant Justin Hegney,  
 \_\_\_\_\_ of the crime of Murder in the First  
 (write not guilty or guilty)  
 Degree as charged in the information.

Presiding Juror

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 01-1-01150-4
	)	
vs.	)	
	)	
JUSIN HEGNEY,	)	VERDICT FORM A-2
	)	
Defendant.	)	
_____	)	

We, the jury, having found the defendant Justin Hegney, not guilty of the crime of Murder in the First Degree as charged, or being unable to unanimously agree as to that charge, find the defendant \_\_\_\_\_ of the crime of the lesser (write not guilty or guilty) included crime of Robbery in the Second Degree.

\_\_\_\_\_  
Presiding Juror

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

v.

JUSTIN HEGNEY,

Defendant.

NO. 01-1-01150-4

VERDICT FORM B-1

We, the jury, find the defendant Justin Hegney,  
(write not guilty or guilty) of the crime of Murder in the Second  
 Degree as charged in the alternative of the information.

Presiding Juror



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 01-1-01150-4
	)	
vs.	)	
	)	
JUSTIN HEGNEY,	)	VERDICT FORM B-2
	)	
Defendant.	)	
_____	)	

We, the jury, having found the defendant Justin Hegney,  
not guilty of the crime of Murder in the Second Degree as  
charged, or being unable to unanimously agree as to that charge,  
find the defendant \_\_\_\_\_ of the lesser  
(write not guilty or guilty)  
included crime of Assault the Second Degree.

\_\_\_\_\_  
Presiding Juror

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 01-1-01150-4
	)	
vs.	)	VERDICT FORM B-3
	)	
JUSTIN HEGNEY,	)	
	)	
Defendant.	)	
_____	)	

We, the jury, having found the defendant Justin Hegney not guilty of the crime of Assault in the Second Degree, or being unable to unanimously agree as to that charge, find the defendant \_\_\_\_\_ of the crime of Assault in the Third (write not guilty or guilty) Degree.

\_\_\_\_\_  
Presiding Juror

Exhibit 11

COURT OF THE STATE OF WASHINGTON  
IN THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JUSTIN HEGNEY and  
JESSE HILL,

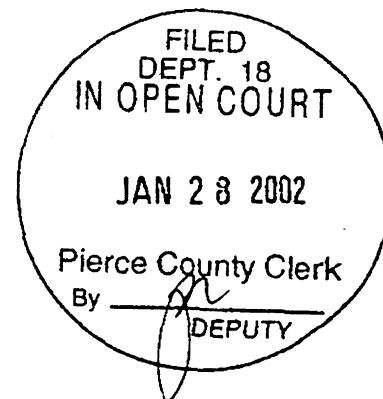
Defendants.

NO. 01-1-01150-4  
01-1-01989-1**ORIGINAL**

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**COURT'S INSTRUCTIONS TO THE JURY**

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DATED this 22<sup>d</sup> day of January, 2002.  
KAREN L. STROMBOM, JUDGE

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendants of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the

testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

INSTRUCTION NO. 2

The defendants have entered a plea of not guilty. That plea puts in issue every element of the crimes charged. The State is the plaintiff, and has the burden of proving each element of the crimes beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 3

A separate crime is charged against one or more of the defendants in each count. The charges have been joined for trial. You must decide the case of each defendant or each crime charged against that defendant separately. Your verdict on any count as to any defendant should not control your verdict on any other count or as to any other defendant.



INSTRUCTION NO. 4

A person commits the crime of Murder in the First Degree when he or an accomplice commits or attempts to commit the crime of Robbery in the First Degree, and in the course of or in furtherance of such crime or in immediate flight from such crime, he or another participant causes the death of a person other than one of the participants.

INSTRUCTION NO. 5

To convict either the defendant JUSTIN HEGNEY or the defendant JESSE HILL of the crime of Murder in the First Degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 19th day of August, 2000, ERIK TOEWS suffered injuries that resulted in his death on or about the 25th day of August, 2000;

(2) That the defendant or an accomplice was committing or attempting to commit the crime of Robbery in the First Degree;

(3) That the defendant or an accomplice caused the death of ERIK TOEWS in the course of or in the furtherance of such crime or in immediate flight from such crime;

(4) That ERIK TOEWS was not a participant in the crime; and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 6

A person who is an accomplice in the commission of the crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of the crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

INSTRUCTION NO. 7

A person commits the crime of Robbery in the First Degree when in the commission of a robbery or in immediate flight therefrom he or an accomplice is armed with a deadly weapon, or displays what appears to be a deadly weapon, or inflicts bodily injury.

INSTRUCTION NO. 8

A person commits the crime of robbery when he or an accomplice unlawfully and with intent to commit theft thereof takes personal property, not belonging to the defendant, from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person or to that person's property or to the person or property of anyone. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear.

INSTRUCTION NO. 9

A person commits the crime of Attempted Robbery in the First Degree when, with intent to commit that crime, he or an accomplice does any act which is a substantial step toward the commission of that crime.

INSTRUCTION NO. 10

A substantial step is conduct which strongly indicates a criminal purpose and which is more than mere preparation.

INSTRUCTION NO. 11

A person knows or acts knowingly or with knowledge when he is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.



INSTRUCTION NO. 12

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 13

Bodily injury, physical injury or bodily harm means physical pain or injury, illness or an impairment of physical condition.

INSTRUCTION NO. 14

Deadly weapon means any weapon, device, instrument, substance or article, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily injury.

INSTRUCTION NO. 15

A person commits the crime of Murder in the Second Degree when he or an accomplice commits or attempts to commit the crime of Assault in the Second Degree, and in the course of and in furtherance of such crime or in immediate flight from such crime he or an accomplice causes the death of a person other than one of the participants.

INSTRUCTION NO. 16

To convict either the defendant JUSTIN HEGNEY or the defendant JESSE HILL, of the crime of Murder in the Second Degree as charged in the alternative in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 19th day of August, 2000, ERIK TOEWS was assaulted and suffered injuries that resulted in his death on or about the 25th day of August, 2000;
- (2) That the defendant or an accomplice was committing or attempting to commit the crime of Assault in the Second Degree.
- (3) That the defendant or an accomplice caused the death of ERIK TOEWS in the course of and in furtherance of such crime or in immediate flight from such crime;
- (4) That ERIK TOEWS was not a participant in the crime; and
- (5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 17

A person commits the crime of Assault in the Second Degree when he or an accomplice intentionally assaults another and thereby recklessly inflicts substantial bodily harm or assaults another with a deadly weapon.

INSTRUCTION NO. 18

A person commits the crime of Attempted Assault in the Second Degree when, with intent to commit that crime, he or an accomplice does any act which is a substantial step toward the commission of that crime.

INSTRUCTION NO. 19

An assault is an intentional touching or striking of another person that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict bodily injury if not prevented. It is not necessary that bodily injury be inflicted.



INSTRUCTION NO. 19A

A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and the disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

Recklessness also is established if a person acts intentionally or knowingly.

INSTRUCTION NO. 20

Substantial bodily harm means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or that causes a fracture of any bodily part.

INSTRUCTION NO. 21

If you are not satisfied beyond a reasonable doubt that a defendant is guilty of the crime charged, a defendant may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish a defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of Murder in the First Degree necessarily includes the lesser crime of Robbery in the First Degree.

When a crime has been proven against a person and there exists a reasonable doubt as to which of two or more crimes that person is guilty, he shall be convicted only of the lowest crime.

INSTRUCTION NO. 22

To convict either the defendant Justin Hegney or the defendant Jesse Hill of the crime of Robbery in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on the 19th day of August, 2000, a defendant or an accomplice unlawfully took personal property from the person of another;
- (2) That a defendant or an accomplice intended to commit theft of the property;
- (3) That the taking was against the person's will by a defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person;
- (4) That the force or fear was used by a defendant or an accomplice to obtain or retain possession of the property;
- (5) That in the commission of these acts, a defendant or an accomplice inflicted bodily injury; and
- (6) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 23

If you are not satisfied beyond a reasonable doubt that a defendant is guilty of the crime charged, a defendant may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish a defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of Murder in the Second Degree necessarily includes the lesser crime of Assault in the Second Degree and Assault in the Third Degree.

When a crime has been proven against a person and there exists a reasonable doubt as to which of two or more crimes that person is guilty, he shall be convicted only of the lowest crime.

JURY INSTRUCTION NO. 24

To convict either the defendant Justin Hegney or the defendant Jesse Hill of the crime of assault in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 19th day of August, 2000, the defendant or an accomplice intentionally assaulted Erik Toews;

(2) That the defendant or an accomplice thereby recklessly inflicted substantial bodily harm on Erik Toews; and

(3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

JURY INSTRUCTION NO. 25

A person commits the crime of assault in the third degree when under circumstances not amounting to assault in the second degree he with criminal negligence causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm or with criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering.

JURY INSTRUCTION NO. 26

To convict either the defendant Justin Hegney or the defendant Jesse Hill of the crime of assault in the third degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 19th day of August, 2000, the defendant or an accomplice caused bodily harm to Erik Toews;

(2) That the physical injury was caused by a weapon or other instrument or thing likely to produce bodily harm;

(3) That the defendant or an accomplice acted with criminal negligence; and

(4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.



JURY INSTRUCTION NO. 27

A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and the failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

Criminal negligence is also established if a person acts intentionally or knowingly.

INSTRUCTION NO. 28

To convict the defendant, JESSE HILL, of the crime of Robbery in the First Degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 17th day of August, 2000, the defendant or an accomplice unlawfully took personal property, not belonging to the defendant or accomplice, from the person or in the presence of RICHARD RICE;
- (2) That the defendant or an accomplice intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person;
- (4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice inflicted bodily injury; and
- (6) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 29

To convict the defendant, JESSE HILL, of the crime of Robbery in the First Degree as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 17th day of August, 2000, the defendant or an accomplice unlawfully took personal property, not belonging to the defendant or accomplice, from the person or in the presence of ELMER JOE;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person;

(4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice inflicted bodily injury; and

(6) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 30

To convict the defendant, JESSE HILL, of the crime of Robbery in the First Degree as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 17th day of August, 2000, the defendant or an accomplice unlawfully took personal property, not belonging to the defendant or accomplice, from the person or in the presence of MICHAEL GOUR;
- (2) That the defendant or an accomplice intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person;
- (4) That the force or fear was used by the defendant or accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That in the commission of these acts or in immediate flight therefrom the defendant inflicted bodily injury; and
- (6) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 31

Evidence has been introduced in this case on the subject of three incidents that occurred on August 17, 2000, involving Richard Rice, Elmer Joe and Michael Gour for the limited purpose of determining whether Defendant Jesse Hill is guilty or not guilty of the robbery charges arising from these incidents. You must not consider this evidence for any purpose concerning Defendant Justin Hegney.

**INSTRUCTION NO. 32**

Evidence has been introduced in this case on the subject of an incident that occurred at the Duck Pond at Wright Park only for the purpose of determining whether on August 19, 2000, Defendant Justin Hegney had knowledge of a plan to assault and/or rob Erik Toews when Erik Toews was confronted. You must not consider this evidence for any purpose concerning Defendant Jesse Hill.

INSTRUCTION NO. 33

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses.

Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 34

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.



INSTRUCTION NO. 35

You may not consider an admission or incriminating statement made out of court by one defendant as evidence against a codefendant.

JURY INSTRUCTION NO. 36

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

JURY INSTRUCTION NO. 37

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to reexamine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 38

Upon retiring to the jury room for your deliberations of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence, these instructions, and special verdict forms.

When completing the verdict forms, you will first consider the crime of Murder in the First Degree as charged for each defendant. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form A the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form A.

If you find a defendant guilty on Verdict Form A, do not use Verdict Forms B, C, D, or E. If you find a defendant not guilty of the crime of Murder in the First Degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will next consider the alternative crime of Murder in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form B the words "not guilty" or the word "guilty", according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form B.

If you find a defendant guilty of the crime of murder but have a reasonable doubt as to which of two or more alternatives of that crime a defendant is guilty, it is your duty to find a

defendant not guilty of Murder in the First Degree on Verdict Form A, and to find a defendant guilty of Murder in the Second Degree, the alternative crime in Verdict Form B.

If you find a defendant guilty on Verdict Form B, do not use Verdict Forms C, D, or E. If you find a defendant not guilty on Verdict Form A or Verdict Form B, or if after full and careful consideration of the evidence you cannot agree on Verdict Form A or Verdict Form B, you will next consider the lesser included crime of Robbery in the First Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form C the words "not guilty" or the word "guilty," according to the decision you reach.

If you find a defendant guilty on Verdict Form C, do not use Verdict Forms D or E. If you find a defendant not guilty of the crime of Robbery in the First Degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will next consider the lesser included crime of Assault in the Second Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form D the words "not guilty" or the word "guilty," according to the decision you reach.

If you find a defendant guilty on Verdict Form D, do not use Verdict Form E. If you find a defendant not guilty of the crime of Assault in the Second Degree, or if after full and careful consideration of the evidence you cannot agree on that crime, you will next consider the lesser included crime of Assault in the Third Degree. If you unanimously agree on a verdict, you must fill in the blank provided in Verdict Form E the words "not guilty" or the word "guilty," according to the decision you reach.

If you find a defendant guilty of the crime of assault but have a reasonable doubt as to which of two degrees of that crime the defendant is guilty, it is your duty to find a defendant not guilty on Verdict Form D and to find the defendant guilty of Assault in the Third Degree on

Verdict Form E.

You must then fill in the blank provided in each of the remaining verdict forms, F, G, and H, with respect to Defendant JESSE HILL, with the words "not guilty" or the word "guilty," according to the decision you reach.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the proper form of verdicts to express your decision. The presiding juror will sign them and notify the judicial assistant, who will conduct you into court to declare your verdict.

## Exhibit 12



01-1-01150-4 15932239 VRD 02-01-02

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

JUSTIN HEGNEY,

Defendant.

ORIGINAL

NO. 01-1-01150-4

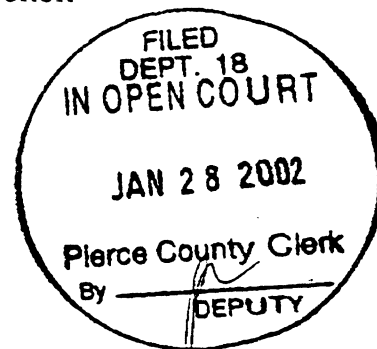
VERDICT FORM A

JUSTIN HEGNEY

FEB 01 2002

We, the jury, find the defendant, JUSTIN HEGNEY,  
Guilty (Not Guilty or Guilty) of the crime of  
 Murder in the First Degree as charged in Count I.

PRESIDING JUROR





## Exhibit 13

1  
2  
3  
4  
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7  
8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
9 IN AND FOR THE COUNTY OF PIERCE  
10

11 STATE OF WASHINGTON,

12 Plaintiff,

13 vs.

14 JUSTIN MICHAEL HEGNEY,

15 Defendant.

16 DOB: 06/05/1985

17 SID NO.: WA20203762

CAUSE NO.01-1-01150-4

JUDGMENT AND SENTENCE (JS)

- 18 ☒ Prison  
19 ☐ Jail One year or less  
20 ☐ First Time Offender  
21 ☐ Special Sexual Offender  
22 Sentencing Alternative  
23 ☐ Special Drug Offender  
24 Sentencing Alternative  
25 ☐ Breaking The Cycle (BTC)

18 I. HEARING

19 1.1 A sentencing hearing in this case was held on 2.22.02 and  
20 the defendant, the defendant's lawyer and the (deputy) prosecuting  
21 attorney were present.

22 II. FINDINGS

23 There being no reason why judgment should not be pronounced, the court  
24 FINDS:

25 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 28th day of  
26 January, 2002 by

27 ☐ plea ☒ jury-verdict ☐ bench trial of:

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

1 of 13

cc to client  
2/25/02  
Office of Prosecuting Attorney  
946 County-City Building  
Tacoma, Washington 98402-2171  
Telephone: (253) 702-7400

Count No.: 1  
Crime: MURDER IN THE FIRST DEGREE, Charge Code: (D3)  
RCW: 9A.32.030(1)(c) and 9A.08.020  
Date of Crime: 08/19/2000  
Incident No.: TPD 00-232-1277

as charged in the Original Information.

- [ ] A special verdict/finding for use of a firearm was returned on Count(s) \_\_\_\_\_. RCW 9.94A.125, .310.
- [ ] A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) \_\_\_\_\_. RCW 9.94A.125, .310.
- [ ] A special verdict/finding of sexual motivation was returned on Count(s) \_\_\_\_\_. RCW 9.94A.127.
- [ ] A special verdict/finding for violation of the Uniform Controlled Substances Act was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, or within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local government authority as a drug-free zone.
- [ ] A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) \_\_\_\_\_. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- [ ] The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- [ ] This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- [ ] The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.129.
- [ ] The crime charged in Count(s) \_\_\_\_\_ involve(s) domestic violence.
- [ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

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[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):  
NONE KNOWN OR CLAIMED.

[ ] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360

[ ] the court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

[ ] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

### 2.3 SENTENCING DATA:

Count	Offender Score	Serious Level	Standard Range (w/o enhancement)	Plus Enhancement*	Total Standard Range	Maximum Term
I	0	XV	240-320 MOS	NONE	240-320 MOS	LIFE/\$50,000

\*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile Present.

2.4 [ ] EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142.

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing ~~agreements or plea agreements~~ are [ ] attached [✓] as follows:

*Date recommended sentence of 320 months.*

### III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The Court DISMISSES Count(s) \_\_\_\_\_. [ ] The defendant is found NOT GUILTY of Count(s) \_\_\_\_\_.

### IV. SENTENCE AND ORDER

#### IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma, WA 98402):

\$ 120.11

Restitution to: Brian Towns

\$ 7,035.53

Restitution to: Crime Victims

\$ \_\_\_\_\_

Restitution to: \_\_\_\_\_  
(Name and Address-address may be withheld and provided confidentially to Clerk's Office).

\$ 500.00

Victim assessment

RCW 7.68.035

\$ 110.00

Court costs, including RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190

Criminal filing fee \$ \_\_\_\_\_  
Witness costs \$ \_\_\_\_\_  
Sheriff service fees \$ \_\_\_\_\_  
Jury demand fee \$ \_\_\_\_\_  
Other \$ \_\_\_\_\_

\$ \_\_\_\_\_

Fees for court appointed attorney RCW 9.94A.030

\$ \_\_\_\_\_

Court appointed defense expert and other defense costs RCW 9.94A.030

\$ \_\_\_\_\_

Fine RCW 9A.20.021 [ ] VUCSA additional fine waived due to indigency RCW 69.50.430

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

1  
2  
3 \$ \_\_\_\_\_ Drug enforcement fund of \_\_\_\_\_ RCW 9.94A.030  
4  
5 \$ \_\_\_\_\_ Crime Lab fee [ ] deferred due to indigency RCW 43.43.690  
6  
7 \$ \_\_\_\_\_ Extradition costs RCW 9.94A.120  
8 \$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430  
9 \$ \_\_\_\_\_ Other costs for: \_\_\_\_\_  
10 \$ 7,765.94 TOTAL RCW 9.94A.145

11 ~~ALL~~ The above total does not include all restitution or other legal  
12 financial obligations, which may be set by later order of the  
13 court. An agreed order may be entered. RCW 9.94A.142. A  
14 restitution hearing:  
[ ] shall be set by the prosecutor  
[ ] is scheduled for \_\_\_\_\_

15 ☒ RESTITUTION. See attached order.

[ ] Restitution ordered above shall be paid jointly and severally with:

16  
17 NAME OF OTHER DEFENDANT CAUSE NUMBER VICTIM NAME AMOUNT-\$

18 See attached order

- 19  
20  
21 [ ] The Department of Corrections (DOC) may immediately issue a Notice  
of Payroll Deduction. RCW 9.94A.200010.  
22 ☒ All payments shall be made in accordance with the policies of the  
clerk and on a schedule established by DOC, commencing immediately,  
23 unless the court specifically sets forth the rate here: Not less  
than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_.  
RCW 9.94A.145.  
24 [ ] In addition to the other costs imposed herein, the Court finds that  
the defendant has the means to pay for the cost of incarceration  
25 and is ordered to pay such costs at the statutory rate.  
RCW 9.94A.145.  
26 [ ] The defendant shall pay the costs of services to collect unpaid  
27 legal financial obligations. RCW 36.18.190.

28 JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)

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[X] The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.2 [ ] HIV TESTING. The health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing.

RCW 70.24.340.

[V] DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.3 The defendant shall not have contact with \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 OTHER: \_\_\_\_\_

4.4(a) Bond is hereby exonerated.

4.5 CONFINEMENT OVER ONE YEAR: The defendant is sentenced as follows:

(a) CONFINEMENT: RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

240 months on Count No. I \_\_\_\_\_ months on Count No. \_\_\_\_\_  
 \_\_\_\_\_ months on Count No. \_\_\_\_\_ months on Count No. \_\_\_\_\_

Actual number of months of total confinement ordered is 240 months.  
 (Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3 above).

(b) CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.400. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set

JUDGMENT AND SENTENCE (JS)  
 (Felony)(6/2000)

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forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [ ] The sentence herein shall run consecutively to the felony sentence in cause number(s)

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here:

Confinement shall commence immediately unless otherwise set forth here:

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

544 days

4.6 ~~AM~~ COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

[X] COMMUNITY CUSTODY (post 6/30/00 offenses) is ordered as follows:

Count 1 for a range from 24 to 48 months;

Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

JUDGMENT AND SENTENCE (JS)  
(Felony)(6/2000)



or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120 for community placement/custody offenses-- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☐ Defendant shall have no contact with: \_\_\_\_\_

☐ Defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to-wit: \_\_\_\_\_

☐ The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_

☐ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse ☐ mental health ☐ anger management and fully comply with all recommended treatment.

☐ The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: \_\_\_\_\_

JUDGMENT AND SENTENCE (JS)  
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4.7 [ ] WORK ETHIC CAMP. RCW 9.94A.137, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated in Section 4.6.

4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

#### V. NOTICES AND SIGNATURES

5.1. COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030.

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## 5.4. RESTITUTION HEARING.

[ ] Defendant waives any right to be present at any restitution hearing (defendant's initials): \_\_\_\_\_

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200.

5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

Cross off if not applicable:

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the State of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of the Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of

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Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5.8 OTHER: \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 2.22.02

Diana Washington  
Deputy Prosecuting Attorney

Print Name: Diana Washington  
WSB# 19723

Justin Hegney / Justin Hegney  
Defendant  
Print name: Justin Hegney

Karen L. Strickland  
JUDGE Print Name:

Wayne C. Frick  
Attorney for Defendant  
Print name: Wayne Frick  
WSB# 11550

JUDGMENT AND SENTENCE (JS)  
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## CERTIFICATE OF INTERPRETER

Interpreter signature/Print name: \_\_\_\_\_  
I am a certified interpreter of, or the court has found me otherwise  
qualified to interpret, the \_\_\_\_\_ language, which  
the defendant understands. I translated this Judgment and Sentence for  
the defendant into that language.

## CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 01-1-01150-4

I, Bob San Soucie, Interim Clerk of this Court, certify that the  
foregoing is a full, true and correct copy of the judgment and sentence  
in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed on this  
date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy  
Clerk

## IDENTIFICATION OF DEFENDANT

SID No.: WA20203762 Date of Birth: 06/05/1985  
(If no SID take fingerprint card for WSP)

FBI No. UNKNOWN

Local ID No. \_\_\_\_\_

PCN No. \_\_\_\_\_

Other \_\_\_\_\_

Alias name, SSN, DOB: \_\_\_\_\_

Race:

Ethnicity:

Sex:

☐ Asian/Pacific Islander  
☐ Black/African-American  
☒ Caucasian  
☐ Native American  
☐ Other: \_\_\_\_\_

☐ Hispanic  
☐ Non-Hispanic

☒ Male  
☐ Female

trp

JUDGMENT AND SENTENCE (JS)  
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FINGERPRINTS

Right four fingers taken simultaneously

Right thumb

Left four fingers taken simultaneously

Left thumb

I attest that I saw the same defendant who appeared in Court on this Document affix his or her fingerprints and signature thereto. Interim Clerk of the Court, BOB SAN SOUCIE:

\_\_\_\_\_, Deputy Clerk.

Dated: 2DEFENDANT'S SIGNATURE: Austin Hegarty

DEFENDANT'S ADDRESS: \_\_\_\_\_

DEFENDANT'S PHONE#: \_\_\_\_\_

FINGERPRINTS

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Exhibit 14

FILED  
COURT OF APPEALS  
DIVISION II

04 APR 20 AM 9:45

STATE OF WASHINGTON  
BY

DEPUTY

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION II**

THE STATE OF WASHINGTON,

Respondent,

v.

JUSTIN MICHAEL HEGNEY,

Appellant.

Nos. 28457-0-II and  
28543-6-II

Consolidated with

THE STATE OF WASHINGTON,

Respondent,

v.

JESSE REPHEAL HILL,

Appellant.

No. 28527-4-II

UNPUBLISHED OPINION

MORGAN, J. — Jesse Hill and Justin Hegney appeal their convictions for first degree felony murder. The predicate offense was robbery. We affirm.



On August 19, 2000, a barbeque was held at Terry Hunt's house. Attendees included Hunt, Robert Hernandez (Robert), Manuel Hernandez (Manuel), Jamar Spencer, Charles Neely, Justin Hegney, Kashif Oyeniya, and Elisha Thompson. Hegney was then 15 years old.<sup>1</sup>

Sometime after 10 P.M., the group went looking for someone to assault. While roaming the area on foot, they were joined by Jesse Hill, age 14,<sup>2</sup> and Jermaine Beaver. Near North 4th Street and North M Street, they spotted a pedestrian named Erik Toews. After Spencer asked Toews for a cigarette, Hunt hit him on the head and knocked him down. The group then kicked and hit Toews until he got up and ran. Some of the group caught him almost immediately, whereupon Hunt again hit him in the head, knocked him down, and began "knee-dropping" him. Some of the others also continued to assault and rob him. Six days later, Toews died from his injuries.

A man named Robin Henry witnessed part of these events. Looking out his apartment window, he saw a group of young people. After watching them for a minute or two, he heard one warn the others, "somebody is looking out the window," and they all fled at the same time.<sup>3</sup> He saw a man lying in the street, so he called 911.

Hegney told the police that he and others had kicked and hit Toews. Their purpose was to keep him from getting up, so they could rob him. As he was kicking and hitting Toews, others were trying to steal from Toews' pockets. He claimed that some but not all ran when they saw Henry watching; that he was one of the ones who ran; and that he was not there when Hunt

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<sup>1</sup> Hegney's birthdate is June 5, 1985.

<sup>2</sup> Hill's birthdate is October 30, 1985.

<sup>3</sup> XIV Report of Proceedings (RP) (Jan. 9, 2002) at 1793.

knocked Toews down the second time. After trying to call Hunt on a cell phone, he returned to Hunt's house.

Hill told the police that everyone had participated equally—except him. He denied hitting Toews but admitting stealing marijuana from him. He said that Robert took Toews' marijuana pipe and that someone else took Toews' cigarettes. As he left, he said, some of the others were still beating Toews.

Beaver told the police that everyone except he and Thompson had kicked and hit Toews. Beaver said that Hegney might not have been involved, but that Hill had assaulted and stolen from Toews. Beaver testified at trial that he had not seen Hegney kick Toews.

Spencer told the police that Hill, Manuel, and Robert kicked and hit Toews. Spencer also said that Hill kicked and hit Toews and went through Toews' pockets. Spencer stated in a June 2001 interview with defense counsel that Hill was present throughout the assault, and that Hill went through Toews' pockets as Robert and Hunt were hitting and kicking Toews. Spencer admitted kicking Toews and stealing \$20 from him. Spencer also said, at various times, that he could not remember who had assaulted Toews, that Hegney was not present after Toews tried to run, and that Hill had not assaulted or stolen from Toews.

Oyenyi told the police that everyone had assaulted Toews except him and Thompson. He later testified that he was unsure where Hegney was during the assault. He admitted that he had stolen from Toews.

In addition to telling the police about the Toews' incident, Hegney also told them about what the parties call the "duck pond" incident. On August 17, 2000, two days before the Toews incident, Hegney, Hunt, Robert, and Perry Dunham were all near a duck pond in Wright Park

when Hegney let a man whom they did not know use Hegney's lighter. Hegney motioned to Hunt not to hit the man until the man returned the lighter. Once that was done, Hunt and Dunham hit the man, Robert kicked him in the groin, and Robert and Hunt stole from him. Hegney participated by kicking the man in the side.

The State asked the juvenile court to decline jurisdiction over Hegney, even though he was not yet 18. The juvenile court so ordered.

The State charged Hegney and Hill in adult court. It alleged that Hegney had committed first degree felony murder on August 19; that Hill had committed first degree felony murder on August 19; and that Hill had committed three additional robberies on August 17.

On August 10, 2001, Hegney and Hill moved for change of venue based on extensive pretrial publicity. On January 2, 2002, the court denied the motion, noting that the jurors indicated that they could make decisions "based on the evidence presented in court."<sup>4</sup>

On August 10, 2001, Hegney moved to sever his trial from Hill's. The trial court denied the motion.

On August 10, 2001, the State moved to admit evidence of the duck pond robbery. The trial court granted the motion over Hegney's objection, and the evidence was later admitted at trial.

In January 2002, a jury trial was held. Hegney and Hill were each found guilty of first degree felony murder. In addition, Hill was found guilty of first degree robbery. After sentencing, they each filed an appeal.

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<sup>4</sup> XI RP (Jan. 2, 2002) at 1524.

I.

The first issue is whether the trial court erred by remanding Hegney to adult court. On February 12, 2001, the juvenile court convened a decline hearing. Hegney's school principal testified that Hegney had many disciplinary problems, including harassing other students, and that he was "charismatic" but had problems with authority. The campus security officer testified that Hegney intimidated other students and that he was the leader among his friends. Hegney's teachers testified that he was manipulative, street smart, mature, and a leader; that he knew how to work the system; and that he intimidated and picked on others. The intake probation officer at juvenile court testified that Hegney had drug and alcohol problems, a lack of regret or remorse, and friends who were negative influences. Witnesses described the penalties, opportunities, and limitations of the juvenile and adult systems, and the juvenile court staff recommended that the juvenile court decline jurisdiction. On the other hand, a social worker retained by Hegney thought Hegney was not dangerous to society, could be rehabilitated, needed clinical treatment, and was immature. She emphasized his lack of prior record, saying that "history is by far the most profound peg to predict future dangerousness."<sup>5</sup> Although she described him as a "cocktail" personality who was manipulative, she concluded that the juvenile court should retain jurisdiction.

On February 20, 2001, the juvenile court examined each *Kent*<sup>6</sup> factor and decided Hegney should be tried as an adult. The court ruled:

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<sup>5</sup> 4 Juvenile RP (Feb. 15, 2001) at 524.

<sup>6</sup> *Kent v. United States*, 383 U.S. 541, 566-67, 86 S. Ct. 1045, 16 L. Ed. 2d 84, 86 (1966) (delineating the factors to analyze when determining whether the juvenile court should decline jurisdiction).

There is no dispute that this is an extremely serious offense. The taking of someone's life is the ultimate offense. . . .

. . . The facts clearly support the conclusion that this offense was committed in an aggressive, violent and willful manner. . . .

. . . Erik Toews died as a result of the offense. There can be no greater injury than death.

. . . This court believes that there is prosecutive merit to the complaint. While the defense has presented testimony to support their position that Justin did not participate in the crime, he did confess on tape to kicking Erik Toews. There is evidence that Justin knew the group was out to beat someone up. There is evidence that he had participated in prior assaultive behaviors. There is evidence that on prior occasions, items had been taken from the victims of prior assaults. . .

. . . This court believes that [the factor regarding the desirability of trial and disposition of the entire case in one court] is neutral with regard to this case. . .

. . . It is apparent to this court that Justin Hegney has asserted his maturity in the many aspects of his life and also evidenced immaturity in many aspects of his life. . . .

. . . While Justin does not have significant prior contacts with the justice system, and arguably this factor weighs in favor of retaining jurisdiction, this court is giving little weight, as it appears Justin's illegal actions were escalating rapidly. . . .

. . . [The social worker] testified that Justin was not a danger to society because of his lack of prior similar incidents and his lack of involvement in the attack on Erik Toews. I do not find her testimony credible in that regard. The testimony shows that Justin has been a danger and has been involved with dangerous friends. . . .

. . . [Justin's] ability to manipulate situations and people causes great concern to this court. Whatever treatment he needs, this court does not believe it could be appropriately dealt with in [the juvenile system], and this court does not believe that the public would be adequately protected should he be retained in the juvenile justice system even until he turns 21.<sup>[7]</sup>

The court later entered written findings of fact and conclusions of law, and this court denied Hegney's motion for discretionary review.

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<sup>7</sup> 4 Juvenile RP (Feb. 20, 2001) at 643-49.

Hegney now urges that the juvenile court's findings of fact regarding sophistication and maturity, the seriousness of the offense, and the preferable disposition of the case are erroneous. This is so, he says, because he had no prior record; because he is only three months older than Beaver, with whom the State chose to make a plea deal; and because the juvenile court chose to retain jurisdiction over four of the other participants.

A juvenile court may decline jurisdiction if it finds, by a preponderance of the evidence, "declination [is] in the best interest of the juvenile or the public."<sup>8</sup> The court must consider the following factors:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint . . . .
5. The desirability of trial and disposition of the entire offense in one court . . . .
6. The sophistication and maturity of the Juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile . . . .
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile . . . by the use of procedures, services and facilities currently available to the Juvenile Court.<sup>[9]</sup>

We will reverse findings of fact only if they are not supported by substantial evidence,<sup>10</sup> and we

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<sup>8</sup> RCW 13.40.110(2).

<sup>9</sup> *Kent*, 383 U.S. at 566-67.

<sup>10</sup> *State v. M.A.*, 106 Wn. App. 493, 499, 23 P.3d 508 (2001).

will reverse the trial court's conclusions only if it abused its discretion.<sup>11</sup>

The first three factors are met here. The offense was a stranger-to-stranger murder committed in an aggressive and violent manner, it was committed against a person, and it resulted in death.

The fourth factor is also met here. The evidence included confessions and statements from other participants, and Hegney admitted on tape that he kicked Toews.

The fifth factor was essentially neutral. Some of the other participants were being tried in adult court, and some in juvenile court.

The sixth factor is met here. Testimony from Hegney's teachers and others demonstrated that Hegney was mature and thus a leader; that he disliked rules; and that he had harassed and intimidated others.

The seventh factor was not met here, for Hegney had not previously been involved with the juvenile system. But substantial evidence supports the court's decision not to give this factor significant weight because, in the period before the murder, Hegney's "illegal actions were escalating rapidly."<sup>12</sup>

Finally, the eighth factor, a highly discretionary one, was also met here. Although the court found that Hegney could probably be rehabilitated, it also found that he manipulated and intimidated other people, and that his needs for counseling and group treatment would not be addressed in the juvenile system.

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<sup>11</sup> *State v. Toomey*, 38 Wn. App. 831, 834, 690 P.2d 1175 (1984), *review denied*, 103 Wn.2d 1012, *cert. denied*, 471 U.S. 1067 (1985)]; *State v. Holland*, 98 Wn.2d 507, 516, 656 P.2d 1056 (1983).

<sup>12</sup> 4 Juvenile RP (Feb. 20, 2001) at 647.

The court properly addressed the *Kent* factors, and its factual determinations were based on substantial evidence. Although a social worker concluded that Hegney was not a danger to society because he had no criminal history, and that the juvenile court should retain jurisdiction, the court was not obligated to accept that testimony.<sup>13</sup> The court did not abuse its discretion.

## II.

The next issue is whether the trial court erred by denying a change of venue. Local media covered the crime and the ensuing court proceedings. Some of the coverage was arguably inflammatory.<sup>14</sup> The articles became less frequent as time went on, but then reappeared when court proceedings commenced. According to both Hegney and Hill, this publicity so “saturated the community” that it violated their rights to fair trial.<sup>15</sup>

We review for abuse of discretion.<sup>16</sup> To determine whether the trial court abused its discretion, we analyze:

- (1) the inflammatory or noninflammatory nature of the publicity; (2) the degree to which the publicity was circulated throughout the community; (3) the length of time elapsed from the dissemination of the publicity to the date of trial; (4) the care exercised and the difficulty encountered in the selection of the jury;

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<sup>13</sup> See *Toomey*, 38 Wn. App. at 837 (court shall consider expert testimony, but court makes the final decision).

<sup>14</sup> Hegney Clerk’s Papers (CP) at 64, 72, 77, 78, 88 (articles labeling the incidents as “wilding”; alleging that the crimes were “thrill beatings”; alleging that the “Youths may feel little for victims” and “Lack of empathy for strangers is cited”; alleging that the youths “terroriz[ed] anybody walking by” and that the neighbors were “terrified”; alleging that Toews was just “one of at least 10 men recently beaten by bands of youths in the Hilltop and Stadium districts”). The Tacoma News Tribune opined that Hill had “shown complete disrespect for the rules of our society,” and that he had played an “aggressive and violent” role in the crime. Hegney CP at 194, 196. Websites accessible to the public referred to the defendants as “scum.” Hegney CP at 95.

<sup>15</sup> Br. of Hill at 8.

<sup>16</sup> *State v. Clark*, 143 Wn.2d 731, 756, 24 P.3d 1006, cert. denied, 534 U.S. 1000 (2001).



(5) the familiarity of prospective or trial jurors with the publicity and the resultant effect upon them; (6) the challenges exercised by the defendant in selecting the jury, both peremptory and for cause; (7) the connection of government officials with the release of publicity; (8) the severity of the charge; and (9) the size of the area from which the venire is drawn.<sup>[17]</sup>

The fourth and fifth factors are dispositive here, as “the best test of whether an impartial jury could be empaneled [is] to attempt to empanel one.”<sup>18</sup> The trial court permitted two written questionnaires and nine days of extensive oral interrogation. It frequently admonished the jurors to ignore any outside information about the trial.<sup>19</sup> Although most of the jurors had heard of the case, they did not remember much about it, had not followed it with much interest, denied preconceived opinions, and promised to base their decision on the evidence presented.<sup>20</sup> The court exercised great care in selecting the jury, and its efforts demonstrated that local jurors would be a fair panel.

The third, seventh, and ninth factors buttress this conclusion. The time between event and trial was 17 months, during much of which there was little publicity.<sup>21</sup> The media obtained much of its information from public records, judicial proceedings, and community interviews,

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<sup>17</sup> *State v. Crudup*, 11 Wn. App. 583, 587, 524 P.2d 479, review denied, 84 Wn.2d 1012 (1974).

<sup>18</sup> *State v. Hoffman*, 116 Wn.2d 51, 72- 73, 804 P.2d 577 (1991).

<sup>19</sup> *State v. Jackson*, 111 Wn. App. 660, 674, 46 P.3d 257 (2002), (“the trial court’s exceptional care offset the difficulties . . . in final jury selection”), *aff’d*, 150 Wn.2d 251 (2003).

<sup>20</sup> See *State v. Rice*, 120 Wn.2d 549, 558, 844 P.2d 416 (1993) (irrelevant that majority of the prospective jurors had knowledge of the case); *Jackson*, 111 Wn. App. at 676 (“the record shows no juror who, despite case knowledge, had such fixed opinions that they could not act impartially”).

<sup>21</sup> Cf. *Rice*, 120 Wn.2d at 557 (“this court has not overturned denials of motions for change of venue when the trial took place 5 to 6 months after the murders”) (citing *State v. Jeffries*, 105 Wn.2d 398, 409, 717 P.2d 722 (6 months), *cert. denied*, 479 U.S. 922 (1986)); *State v. Rupe*, 101 Wn.2d 664, 675, 683 P.2d 571 (1984) (5 months)).

and the trial court was careful to insure that none of the jurors had been exposed to a problematic statement made publicly by the Pierce County Prosecutor. The jury was drawn from a metropolitan county with more than 700,000 residents.<sup>22</sup> Even assuming that the remaining factors all favored a change of venue, the trial court did not abuse its discretion.

### III.

The next issue is whether the trial court erred by denying Hegney's motion to sever his trial from Hill's. Hegney contends that Hill had given a taped statement implicating him in Toews' murder, and that the court's admission of that statement violated his right to confront the witnesses against him.

A defendant's right to confront witnesses is violated if he is "incriminated by a pretrial statement of a [non-testifying] codefendant."<sup>23</sup> That right is not violated, however, if the court redacts the non-testifying codefendant's statement so that it does not refer to the objecting defendant or contain pregnant deletions that impliedly refer to the objecting defendant, provided that the court gives a limiting instruction.<sup>24</sup> Consistently, Criminal Rule 4.4(c) states:

(1) A defendant's motion for severance on the ground that an out-of-court statement of a codefendant referring to him is inadmissible against him shall be granted unless:

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<sup>22</sup> Cf. *Rupe*, 101 Wn.2d at 675 (63,000 pool is large); *Jackson*, 111 Wn. App. at 676 (Spokane County is large enough pool to not favor venue change).

<sup>23</sup> *Hoffman*, 116 Wn.2d at 75 (citing *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968)).

<sup>24</sup> *Gray v. Maryland*, 523 U.S. 185, 192, 118 S. Ct. 1151, 140 L. Ed. 2d 294 (1998) (impermissible to replace a name with an obvious blank, word, symbol, or other alteration, thereby implying reference to objecting defendant); *Richardson v. Marsh*, 481 U.S. 200, 208, 107 S. Ct. 1702, 95 L. Ed. 2d 176 (1987) (confession redacted to omit all reference to the codefendant was permissible because the statement was incriminating only when linked to other evidence); *State v. Larry*, 108 Wn. App. 894, 905, 34 P.3d 241 (2001), *review denied*, 146 Wn.2d 1022 (2002).

....  
(ii) deletion of all references to the moving defendant will eliminate any prejudice to him from the admission of the statement.

The statement in issue here was Hill's. Insofar as that statement was related to the jury, however, *Hill did not name Hegney*. Hill said that he "met up with Terry, Terry Hunt, Robert and Manuel Hernandez, Andrew Neely, Jamar [Spencer], and . . . Thompson [sic]."<sup>25</sup> Hill said that "*they* ran up and beat this guy up"; that "*they* were still beating up on the victim when he and Jermaine decided to go home"; that after Hunt knocked Toews down, "*the remainder of the guys* jumped the guy and began kicking and hitting him"; that "*everyone* else had equally participated in the assault"; "*everybody* else started jumping, jumping on him"; "*everybody* else was hitting him"; and "*everybody* was hitting him."<sup>26</sup> Although Hegney asserts the contrary, these statements did not refer to him by name or otherwise; did not contain any blanks or obvious deletions; and were accompanied by a limiting instruction.<sup>27</sup> Thus, the trial court did not err by admitting them.

#### IV.

The next issue is whether the trial court erred by admitting evidence about the "duck pond" robbery. Hegney argued to the trial court and reiterates to us that such evidence generated unfair prejudice that substantially outweighed its probative value. The trial court held to the

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<sup>25</sup> XVI RP (Jan. 14, 2002) at 2219.

<sup>26</sup> XVI RP (Jan. 14, 2002) at 2219-20, 2222-23, 2229, 2232 (emphasis added).

<sup>27</sup> Hegney CP at 759.

contrary, reasoning in part that the incident showed “Hegney’s knowledge as to how the group was going to react under certain circumstances.”<sup>28</sup>

ER 404(a) excludes such evidence to the extent it shows a propensity to commit crimes. ER 404(b) does not exclude it to the extent it shows relevant knowledge. It is admissible to show such knowledge, so long as its tendency to show propensity (unfair prejudice) does not substantially outweigh its tendency to show knowledge (probative value).<sup>29</sup>

Hegney contended at trial that he did not know the group intended to rob Toews after assaulting him, and thus that he was not an accomplice to robbery or first degree felony murder. Evidence of the duck pond incident supported a reasonable inference that Hegney knew that Hunt and others were going to rob Toews, just as Hunt and others had robbed the man at the duck pond. The trial court properly balanced probative value against unfair prejudice, and it did not abuse its discretion.

#### V.

The next issue is whether the evidence is sufficient to support Hegney’s and Hill’s convictions for first degree felony murder. Evidence is sufficient if, viewed in the light most favorable to the prosecution, it permits a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.<sup>30</sup>

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<sup>28</sup> XI RP (Jan. 2, 2002) at 1505.

<sup>29</sup> See *State v. Herzog*, 73 Wn. App. 34, 48-50, 867 P.2d 648, review denied, 124 Wn.2d 1022 (1994).

<sup>30</sup> *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Hegney argues the evidence is insufficient to show “he had knowledge that a robbery was going to occur.”<sup>31</sup> We disagree. When Hegney was interviewed by the police, he explained that he and others had assaulted Toews so they could steal from Toews. The evidence amply supports inferences that as the assault was occurring, various members of the group were stealing things from Toews—Hill, for example, admitted stealing marijuana from Toews. Hegney had been at the duck pond incident, during which another stranger had been assaulted and robbed. Taken in the light most favorable to the State, a rational trier could conclude that Hegney knew the group would rob Toews and that he knowingly participated in that activity.

Hegney argues that the evidence shows, so clearly reasonable minds could not differ, that the members of the group perpetrated two separate assaults and robberies on Toews; that he did not participate in the “second” assault and robbery; that the injuries that took Toews’ life were inflicted during the “second” assault and robbery; and thus that his conduct did not cause Toews’ death.<sup>32</sup> In our view, however, the evidence supports a reasonable inference that the entire group perpetrated one continuous assault and robbery in which Hegney was a knowing and willing participant. Assuming without holding that the evidence also supports a competing inference (i.e., that there were two assaults and robberies, in the second of which Hegney did not participate), the matter was for the jury to decide, and we perceive no ground on which to disturb its verdict.

Hill argues that the evidence is insufficient to show that he knew Hunt or the others planned to assault or rob Toews. The evidence is sufficient to support Hill’s conviction if, taken

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<sup>31</sup> Br. of Hegney at 16.

<sup>32</sup> Br. of Hegney at 16 (asserting that Hegney’s “participation ended prior to the infliction of the life-ending injury inflicted by Hunt and the others which was an intervening cause”).

in the light most favorable to the State, it shows (1) that Hill perpetrated or knowingly aided in the robbery of Toews, and (2) that “in the course of or in furtherance of such [robbery] or in immediate flight therefrom,” Hill or another participant caused Toews’ death.<sup>33</sup> The evidence shows that Hill aided in robbing Toews, for Hill himself told the police that while others were beating Toews, he stole marijuana from Toews. Furthermore, the evidence shows that “in the course of or in furtherance of” the robbery, one or more of the participants caused Toews’ death. The evidence is sufficient to support Hill’s conviction for first degree felony murder.

Citing *State v. Roberts*<sup>34</sup> and *State v. Cronin*,<sup>35</sup> Hill argues that knowingly aiding or abetting a robbery “does not impose strict liability for any and all offenses that follow,”<sup>36</sup> and thus that he is not guilty of first degree felony murder merely because he knowingly participated in an assault and robbery. He argues that he “must have acted with knowledge that he or she was promoting or facilitating” Toews’ murder,<sup>37</sup> and “that he was not guilty of felony-murder as a principle [sic] or an accomplice because he did not plan, intend, or know of any plan or intent to kill anyone.”<sup>38</sup>

Washington’s complicity statute is RCW 9A.08.020. It generally provides that an accomplice is liable for the crime of a principal only if the accomplice knowingly encouraged the

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<sup>33</sup> RCW 9A.32.030(1)(c).

<sup>34</sup> 142 Wn.2d 471, 14 P.3d 713 (2000).

<sup>35</sup> 142 Wn.2d 568, 14 P.3d 752 (2000).

<sup>36</sup> Br. of Hill at 21 (quoting *Roberts*, 142 Wn.2d at 513).

<sup>37</sup> Br. of Hill at 21 (quoting *Cronin*, 142 Wn.2d at 579).

<sup>38</sup> Reply Br. of Hill at 1.

principal to commit that crime.<sup>39</sup> As a general rule then, an accomplice to one crime is not necessarily an accomplice to all crimes that happen to follow.

Washington's first degree felony murder statute provides an exception to this general rule. Enacted at the same time as the complicity statute,<sup>40</sup> and now codified as RCW 9A.32.030(1)(c), it provides that an accomplice to a robbery is liable for first degree felony murder if, "in the course of or in furtherance of [that robbery] or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants"; provided, however, that an accomplice can avoid liability if he or she shows, *as a defense*, that he or she did not "solicit . . . or aid the commission" of the principal's homicidal act.<sup>41</sup> Essentially then, this statute provides that a robbery accomplice assumes the risk that a non-robber might die during the robbery, even if there is no plan or intent to kill; and that the robbery accomplice will be liable for the death whether or not he knew of a plan or intent to cause it.

The Washington State Supreme Court recognized this exception in the *Roberts* and *Cronin* cases. Although it reversed the intentional murder convictions of accomplices who lacked "general knowledge" of the principal's plan to kill, it affirmed the felony murder convictions of those same people.<sup>42</sup>

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<sup>39</sup> *Roberts*, 142 Wn.2d at 512-13 (accomplice must have "general knowledge" of principal's "specific crime"); *see also Cronin*, 142 Wn.2d at 579 (same).

<sup>40</sup> LAWS OF 1975, 1ST EX. SESS. CH. 260, §§ 9A.08.020, 9A.32.030.

<sup>41</sup> RCW 9A.32.030(1)(c)(i). The accomplice must also meet additional requirements not pertinent here. *See* RCW 9A.32.030(1)(c)(ii)-(iv). No one argues, nor could he argue, that the defense was established in this case so clearly that reasonable minds could not differ.

<sup>42</sup> *Roberts*, 142 Wn.2d at 478, 534; *Cronin*, 142 Wn.2d at 570, 586.

*State v. Israel*,<sup>43</sup> a case Hegney relies on, involved crimes other than felony murder. Thus, it involved the general rule laid down by *Roberts* and *Cronin*, not the exception recognized therein.

*Mitchell v. Prunty*,<sup>44</sup> a case Hill relies on, is simply unclear. It does not indicate whether it involved intentional murder or felony murder, so it is not helpful here.

In summary, the evidence is sufficient to support findings that Hegney and Hill participated in the assault and robbery of Toews; that the group stayed together, so that everyone was present during that event; and that Hegney and Hill knew the group meant to rob Toews because the group (or some of its members) had engaged in similar, concerted conduct in the past. The jury had the authority to sift the evidence, assess credibility, and decide whether those findings should be made. We have no reason to disturb its verdicts, and we decline to do so.

## VI.

The next issue is whether the trial court properly instructed the jury on accomplice liability. The trial court instructed:

A person who is an accomplice in the commission of the crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of the crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word “aid” means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and

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<sup>43</sup> 113 Wn. App. 243, 54 P.3d 1218 (2002), *review denied*, 149 Wn.2d 1013, 1015 (2003).

<sup>44</sup> 107 F.3d 1337 (9th Cir.), *cert. denied*, 522 U.S. 913 (1997), *overruled in part by Santamaria v. Horsley*, 133 F.3d 1242 (9th Cir. 1998).



ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.<sup>[45]</sup>

Even though this instruction properly stated the elements of accomplice liability,<sup>46</sup> Hegney and Hill argue that the trial court erred by not also giving the last paragraph of Hegney's proposed instruction 11.<sup>47</sup> That paragraph provided:

Knowledge of an accomplice that the principal intended to commit a particular crime does not impose strict liability for any and all offenses that follow. An accomplice must have the purpose to promote or facilitate the particular conduct that forms the basis for the charge and the accomplice is not liable for conduct that does not fall within this purpose.<sup>[48]</sup>

We reject this argument. The court's instruction told the jury that Hegney and Hill each could be an accomplice to robbery "if, with knowledge that it will promote or facilitate the commission of the crime," he encouraged or aided another person in committing that crime. The court's first degree felony murder instruction properly told the jury that if Hegney and Hill each was an accomplice to a robbery in the course of which another participant caused Toews' death, Hegney and Hill were liable for felony murder. Neither Hegney nor Hill was entitled to more, and the trial court did not err by instructing as it did.

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<sup>45</sup> Hegney CP at 729.

<sup>46</sup> *In re Personal Restraint of Sarausad*, 109 Wn. App. 824, 838-39, 39 P.3d 308 (2001); *State v. Mullin-Costin*, 115 Wn. App. 679, 690-91, 64 P.3d 40, review granted, 150 Wn.2d 1001 (2003).

<sup>47</sup> The first several paragraphs of Hegney's proposed instruction were almost the same as the one the trial court gave. The only difference was that the proposed instruction did not contain the first sentence of the trial court's instruction.

<sup>48</sup> Hegney CP at 685 (Instruction 11).

Hill argues that “the only real issue was whether or not [he] had any intent to rob or kill Toews.”<sup>49</sup> For reasons already stated, however, the issue was his intent to rob or knowingly encourage a robbery, not his intent to kill. He was charged with *felony* murder occurring in the course of a robbery, not with intentional murder.

Hill argues that the trial court “should have utilized Instruction 6 as proposed by the defense,”<sup>50</sup> and the court erred by not so doing. He does not quote proposed instruction 6,<sup>51</sup> he does not tell us where to find it in the record,<sup>52</sup> and he neglected to number the proposed instructions that he included in the record. If he is reiterating Hegney’s argument about the omission of Hegney’s proposed instruction 11, we ruled above. If he is arguing something else, we cannot tell what that is. The trial court did not err in the way that it instructed the jury.

## VII.

The last issue is whether the prosecutor prejudicially misstated the law during closing argument. Hill’s attorney argued “anyone who doesn’t want to participate in the level of crime that the person is contemplating can opt out of the crime, can disassociate themselves from the group and not participate in that particular crime,” even though nothing in the instructions stated such a concept.<sup>53</sup> The prosecutor replied:

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<sup>49</sup> Br. of Hill at 27.

<sup>50</sup> Br. of Hill at 27.

<sup>51</sup> See RAP 10.4(c) (party who presents issue requiring study of jury instruction should include that instruction in brief on appeal).

<sup>52</sup> See RAP 10.4(f) (“A reference to the record should designate the page and part of the record.”).

<sup>53</sup> XIX RP (Jan. 22, 2002) at 2593.

Once you're an accomplice and someone dies in the course of or in the furtherance of or immediate flight from the crime, you are liable for the murder.

Well, let's look at that language a little bit, about in the course of, in the furtherance of or in the immediate flight therefrom. You'll notice that casts a broad net. It covers the whole crime from the start to the actual event itself, up until the point that they are even fleeing from the scene. It's a continuous chain of liability, so to speak. . . . It encompasses everything that happened out there from when Erik Toews was first beaten down on the ground to the time he's being kicked and pummeled, to the time his pockets are being gone through, to the time that he miraculously is able to get up and run, but not very far, to the time he's beaten again, up until the time these folks all leave the scene. That rule, that law covers every step of the way, in the course of, in the furtherance of or in immediate flight from. There's no exception to that. There is no loop hole to that, and what the defense attorneys are asking you to do is to create a loop hole in the law that doesn't exist.<sup>[54]</sup>

When defense counsel objected, the court told the jury "to go by the instructions that the court has given."<sup>55</sup> The prosecutor then continued:

They are asking for an exception to the law that doesn't exist in there, because this law covers the entire progress, from the time they meet Erik out here, to the time they flee. And we know that Erik did, in fact, die or died as a result of injuries that were suffered that night. And therefore because he died at the hands of the participants, these defendants as they sit here are guilty of murder in the first degree, because they helped out, they helped out with the robbery, they helped each other do it.<sup>[56]</sup>

These arguments were proper to the extent they reflected the parties' factual dispute over whether the incident involved one continuing assault and robbery, or two discrete assaults and robberies. These arguments were proper to the extent that Hegney and Hill was each liable for felony murder if he knowingly aided or encouraged a robbery in the course of which Toews died. These arguments may have been improper to the extent they involved "opting out"—a matter on

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<sup>54</sup> XIX RP (Jan 22, 2002) at 2619-20.

<sup>55</sup> XIX RP (Jan. 22, 2002) at 2620.

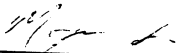
<sup>56</sup> XIX RP (Jan. 22, 2002) at 2620.

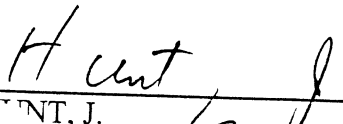
which the trial court did not instruct—but Hill’s counsel invited response on that subject by opening it. Perceiving no error, we affirm the judgments entered below.


Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

We concur:

  
MORGAN, J.

  
HUNT, J.

  
QUINN-BRINTNALL, C.J.

**Exhibit 15**

# THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JUSTIN MICHAEL HEGNEY,

Petitioner.

-----

STATE OF WASHINGTON,

Respondent,

v.

JESSE REPHEAL HILL,

Petitioner.

NO. 75471-3

## ORDER

C/A NOS. 28457-0-II, 28543-6-II, &  
28527-4-II (consolidated)

NOV 02 2004  
OFFICE OF  
CLERK

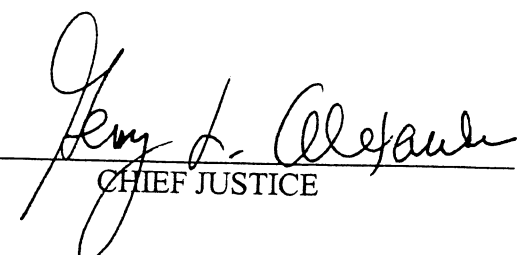
FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2004 NOV 30 P 4:42  
Clerk

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Ireland, Chambers and Fairhurst, considered this matter at its November 30, 2004, Motion Calendar, and unanimously agreed that the following order be entered.

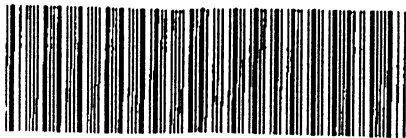
IT IS ORDERED:

That the Petitions for Review are denied.

DATED at Olympia, Washington this 30<sup>th</sup> day of November, 2004.

  
CHIEF JUSTICE

## Exhibit 16



01-1-01150-4 22277748 MND 12-20-04

FILED  
IN COUNTY CLERK'S OFFICE

A.M. DEC 17 2004 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

STATE OF WASHINGTON,  
Respondent,

v.

JUSTIN MICHAEL HEGNEY,  
Appellant.

STATE OF WASHINGTON,  
Respondent,

v.

JESSE REPHEAL HILL  
Appellant.

No. 28457-0-II consol w/  
28543-6-II and 28527-4-II

### MANDATE

Pierce County Cause Nos.  
01-1-01150-4, 00-8-02128-1,  
01-1-01989-1

The State of Washington to: The Superior Court of the State of Washington  
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on April 20, 2004 became the decision terminating review of this court of the above entitled case on November 30, 2004. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs and attorney fees have been awarded in the following amount:

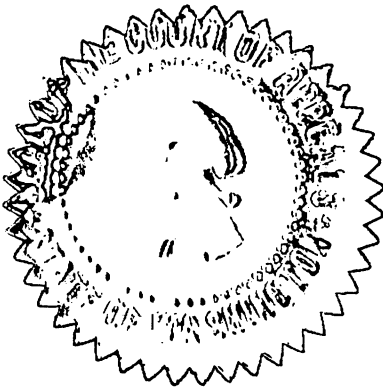
Judgment Creditor Respondent State: \$17.89  
Judgment Creditor A.I.D.F.: \$13,680.44  
Judgment Debtor Appellant Hegney: \$5,787.16  
Judgment Debtor Appellant Hill: \$7,911.17



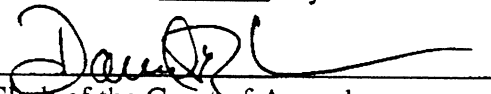
MANDATE

28457-0-II (cons w/28543-6-II and 28527-4-II)

Page Two



IN TESTIMONY WHEREOF, I have hereunto set  
my hand and affixed the seal of said Court at  
Tacoma, this 17<sup>th</sup> day of December, 2004.

  
Clerk of the Court of Appeals,  
State of Washington, Div. II

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Pierce Co Dep Pros Atty  
930 Tacoma Ave S  
Tacoma, WA, 98402-2171

Hon. Karen L. Stromborn  
Pierce Co Superior Court Judge  
930 Tacoma Ave So  
Tacoma, WA 98402

Dept. of Juvenile Rehabilitation  
DSHS OFFICE BLDG 2  
PO BOX 45720  
OLYMPIA WA 98504-5720

Exhibit 17

**DECLINATION REPORT**

RECEIVED  
FEB 06 2001  
JAN 31 2001

**TO:** Judge Karen L. Strombom  
Rosie Martinelli – Prosecuting Attorney  
Donna Masumoto – Prosecuting Attorney  
Wayne Fricke – Attorney

**FROM:** Tara Varela – Probation Officer

**RE:** JUSTIN M. HEGNEY

**DATE/TIME OF HEARING:** February 12, 2001 at 9:00 a.m.

**DATE OF BIRTH:** 06-05-85 **AGE:** 15.7

**JUVIS NO.:** 766240 R030 and R040

**CAUSE NO:** 00-8-02561-8 and 00-8-02128-1

**CURRENT OFFENSES:**

**MURDER IN THE FIRST DEGREE and in the alternative, MURDER IN THE SECOND DEGREE, with ROBBERY IN THE FIRST DEGREE being the underlying offense**

Information included in the Declaration for Determination of Probable Cause states the following information:

That in Pierce County, Washington, on or about Saturday, the 19<sup>th</sup> day of August, 2000, at 22:32 hours, a group of individuals including Manuel Hernandez, Jamar Spencer, Charles Neely, Jesse Hill, Justin Hegney, Robert Hernandez and Terrance Hunt, robbed and beat Erik Michael Toews with fists, feet, and a stick, causing him to lapse into a deep coma. Toews died as a result of these injuries on August 25, 2000.

On August 19, 2000, a citizen observed a disturbance outside his residence on North 4<sup>th</sup> Street in Tacoma. He looked out of his window and saw a group of youths gathered in a circle on the street. At first he thought they were playing. He then saw the victim, Eric Toews, lying on the ground. The suspects were kicking and stomping on Toews. The witness called 911 and returned to the window. The suspects continued to assault Toews until one of them saw the witness in the window. He warned others, and they all fled the scene. Police and medical aid arrived. Toews was transported to the hospital, and he later died of his injuries.

The police interviewed numerous witnesses and suspects. After being advised of his Miranda Rights, Jamar Spencer stated he was at a barbeque at Hunt's house on the day of the incident with Neely, Manuel and Robert Hernandez and Hunt. At about 11:20 p.m., they left together and were joined by Hill and Hegney. Spencer stated that they had gone out together and beaten up people three times prior to this incident. While out walking, Spencer said that Hunt saw a man he wanted to beat up, but the others did not agree because the man was by a busy road, so they kept walking. Then they saw Toews. According to Spencer, Hunt asked the others, "do you want to get him?" Spencer then stated that "everyone said 'yeah.'" Spencer said he approached Toews and asked him for a cigarette. While Toews was distracted, one of them "socked [Toews] in the jaw." Spencer stated: "And then everybody started stomping him and stuff." Spencer stated that Hunt and Robert Hernandez were the first to assault the victim. Spencer stated: "And then me and Manuel and Justin and Andrew started kicking him." Spencer said that Hill then started hitting the victim in the face. Spencer stated that at one point, Toews tried to get up and run, but was caught, beaten again, and knocked unconscious. Spencer said that Jesse Hill went through Toew's pockets and stole some marijuana. They then looked up and saw a man looking at them from a window with a phone, and they all started running. Spencer stated that he participated in the assault because he was "bored."

After the advisement of his Miranda Rights, Manuel Hernandez admitted he was with the group on August 19<sup>th</sup> at the barbecue. Manuel stated that afterwards they went out. According to Hernandez, Jesse Hill asked Hunt if he wanted to go beat somebody up "cause they were bored." Hunt said "okay." Manuel said Hunt and Hill hit Toews while Neely hit the victim with the stick portion of a croquet mallet. Manuel admitted to kicking and hitting Toews when Toews was on the ground. Manuel said that everyone was yelling, "hit him," and everyone was hitting him. He said that Hill went through the victim's pockets and found some marijuana. Manuel said they saw someone looking at them from a window, and everyone ran.

After the advisement of his Miranda rights, Charles Neely admitted to being with the group that attacked Toews. Neely admitted to having the stick portion of a croquet mallet with him at the time. Neely stated that during the assault, he made motions with the stick as if he were actually hitting the victim. He claimed, however, that he did not actually hit the victim.

After the advisement of his Miranda rights, Jesse Hill stated that he met up with Hunt, Hill, Neely, Manuel Hernandez and others as they were in the street. According to Hill, Hunt started hitting Toews and "everybody else started jumping, jumping on him." Hill admitted to going through Toews' pockets when Toews was on the ground. Hill stated he found some marijuana in his pockets.

After the advisement of his Miranda rights, Justin Hegney stated that he was at Hunt's house for the barbecue. Hegney stated that he left with barbecue with Hunt, Neely, Hill, Robert and Manuel Hernandez, and Spencer. Hegney stated that one of the group members had said, "Let's go get somebody." Hegney said that Neely armed himself with a pole. They saw Toews, and Hunt hit him. Hegney said, "Then everybody, including myself, ran up and started kicking him." Hegney said he saw "everybody" kicking him and he saw Hill going through the victim's pockets. Hegney said that Hill stole marijuana from the victim.

#### **UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE- DIHYDROCODEINONE**

Information included in the Declaration for Determination of Probable Cause states the following information:

On September 26, 2000, Juvenile Detention Officer Wong was conducting a routine room search of a room in "F" pod, occupied by Justin Hegney. During the search, JDO Wong found a clump of paper concealed in a soapbox. Inside the paper were two white tablets and a pink/yellow capsule. Wong noticed that the white tablets, which had markings on them of "Watson 349," matched Hydrocodone painkillers issued to another youth, Steven Vanzandt. The pink/yellow capsule had the same markings and appearance of another painkiller, Hydroxyzine, which was also issued to Vanzandt. A nurse agreed with Wong's identification of the pills. The pills were then placed in Detention Supervisor Bill Hollonsyde's box.

Hegney was at visitation at the time Wong found the pills. When Hegney returned at 1903 hours, Wong informed him of his find. Hegney denied owning the pills and denied having any knowledge of how they got into his room.

At 2030 hours, the juveniles on honors and privilege status were let out of their rooms. Steven Vanzandt immediately went to Hegney's cell door. Wong ordered Vanzandt away. When Vanzandt was about five steps away, he turned around and shrugged. Hegney then called out; "he found it!"

Wong noted that Hegney is the sole occupant of his room and that Hegney has never had a roommate during his current stay at Remann Hall. Access to Hegney's room is limited to himself and staff and unit regulations are clearly posted. The doors to the rooms have an auto-locking feature, which means that when they are closed, they automatically lock and can only be opened with a key or from the staff console. The staff console is limited to staff.

Wong also noted that Vanzandt is the only youth in "F" pod that was prescribed the above-referenced substances.

### STATUS OF CO-RESPONDENTS:

**1. JERMAINE BEAVER: D.O.B. 03-26-85**

Jermaine Pled Guilty to Conspiracy to Commit Murder on 12/28/00. Jermaine was committed to JRA until his 21<sup>st</sup> Birthday under a Manifest Injustice sentence.

**2. CHARLES NEELY: D.O.B. 09-29-88**

Charles is scheduled to go to Trial on 07/23/01 for Murder in the First Degree.

**3. JAMAR SPENCER: D.O.B. 01-18-88**

Jamar is scheduled to go to Trial on 07/23/01 for Murder in the First Degree and Robbery in the First Degree – Three counts.

**4. MANUEL HERNANDEZ: D.O.B. 10-18-87**

Manuel is scheduled to go to Trial on 07/23/01 for Murder in the First Degree and Robbery in the Second Degree – Two counts.

**5. ROBERT HERNANDEZ: D.O.B. 04-04-80**

Robert was automatically declined to adult status and sent to Pierce County Jail. Robert is set for Trial on 06/04/01 for Murder in the First Degree.

**6. TERRANCE LASHAWN HUNT: D.O.B. 09-07-80**

Terrance currently resides at the Pierce County Jail and is scheduled to go to Trial on 06/04/01 for Murder in the First Degree.

**7. JESSE HILL: D.O.B. 10-30-85**

Jesse is currently scheduled for a Declination hearing on March 20, 2001.

### CRIMINAL OFFENSE HISTORY:

**Unlawful Possession of a Controlled Substance (May 2, 2000)**

This matter was originally sent to the Diversion program. A Diversion Agreement was signed and Justin agreed to obtain a drug/alcohol evaluation, follow through with recommended treatment services and complete community service hours. Justin entered into this agreement on August 17, 2000. Justin did follow through with obtaining a drug/alcohol evaluation, and he began treatment services on August 29, 2000. Justin was arrested immediately following his first evening of treatment and his contract with the Diversion program has since been rejected. No charges have been filed by the Prosecuting Attorney's Office as to this incident.

**Malicious Mischief in the Third Degree (May 19, 2000)**

No charges were filed as to this case.

Level of Risk:       **HIGH**

**PRIMARY AREAS OF RISK (CHECK TO SELECT AND ADD COMMENTS)**

- ☒ Criminal History
- ☒ School
- ☐ Employment
- ☒ Use of free time
- ☐ Mental Health
- ☒ Relationships
- ☒ Alcohol and Drugs
- ☒ Current Living Arrangements
- ☒ Attitude/Behavior
- ☐ Environment in which youth was primarily raised
- ☒ Skills

**RECOMMENDATIONS:**

This case was presented before the Staffing Committee on November 15, 2000, November 29, 2000 and January 3, 2001. It is the unanimous recommendation of the Committee to support Declination as to both cases.

I met with Colleen Cornell, mother of Erik Toews, on November 20, 2000. This incident has impacted every aspect of her life and she would like to see Justin declined for this offense. Ms. Cornell believes the respondents should be held accountable for their actions and can't help but to think this incident could have been prevented if the community had been aware of the previous attacks.

Ms. Cornell described her son as being a very loving and giving young man whom wouldn't think twice about helping others. Ms. Cornell is deeply saddened that her son lost his life at such young age and it appears that he impacted many people's lives.

The victim impact statements are included in the social file for review (Volume I).

**FAMILY HISTORY: (PER CATHY CAMPBELL)**

Cathy Campbell  
1711 South 7<sup>th</sup> Street  
Tacoma, Washington. 98405  
(253) 572-7928 (home)

Marshall Hegney  
7416 157<sup>th</sup> Street East  
Puyallup, Washington. 98373  
(253) 539-0355

Cathy Campbell and Marshall Hegney met at a local Colville High school in Oregon. Ms. Campbell described herself as a "pleaser" and Marshall was described as a "bad boy". Ms. Campbell came from a supportive family and Marshall came from somewhat of a broken home environment. Ms. Campbell indicated that Marshall drank, physically and emotionally abused her and had established a fairly significant criminal history at a young age. However, she loved Marshall very much and in some ways hoped she could "change him."

Marshall and Cathy started dating at approximately 17 years of age and were subsequently engaged by 19. Kathy entered the military and was transferred to Alabama for about 7 months. Upon return, the two were engaged and married a short time later. Ms. Campbell knew their relationship had changed as a result of her entering the military, but again, she felt she could change him.

Justin is the third of three children born to Ms. Campbell. Jeremy Hegney is 20 years of age and currently resides in Puyallup, Washington. Christina Hegney is 18 years of age and recently re-located to Hawaii to reside with her boyfriend. Neither Jeremy nor Christina have criminal histories. However, Jeremy does have a history of drug use.

At birth, Justin weighed 6 pounds 9 ounces and was born via a cesarean section. Ms. Campbell's pregnancy was described to be normal, without any concerns or complications. Ms. Campbell denies using drugs of any kind during her pregnancy with Justin.

Shortly after Justin's birth, the family re-located to Spanaway, Washington. Mr. Hegney established employment with a local electrical company and his salary was one that could accommodate Ms. Campbell's wish to stay home with her children. Ms. Campbell was a "stay at home mom" for approximately one-year, until Mr. Hegney's insurance was cut off and she was subsequently forced to return to the workforce. Ms. Campbell soon established employment with Luck's (a kitchen equipment company), where she remains a dedicated and much appreciated employee.

Ms. Campbell described Justin's growth and development to be normal, without concern and he reportedly reached his developmental milestones on time without any complications and Ms. Campbell describes her son's young years to be "very happy, with lots of friends."

Ms. Campbell and Mr. Hegney continued in their marriage for approximately 12 years. Ms. Campbell indicated she could no longer take her husband's abuse towards her and he apparently became abusive towards her oldest son Jeremy, as well. Ms. Campbell made a "plan" to get out of the marriage. Ms. Campbell eventually saved up enough money and courage to leave her husband.



Ms. Campbell established housing at a local trailer park and was able to hold down her job at Lucks and care for her children.

Mr. Marshall and Ms. Campbell ultimately divorced in 1986. A custody battle ensued as a result of the divorce and Ms. Campbell ultimately received full custody of the children. Ongoing visitation was awarded to Mr. Hegney as outlined in a their parenting plan.

Ms. Campbell admits that Justin appeared to be very angry and confused by the divorce and custody proceedings. For this reason, counseling through Family Reconciliation Services and Pacific Lutheran University was sought out to address this issue. Ms. Campbell believes the counseling was of some benefit to the family, but she readily admits she and Marshall have continuously fought over the children, placement and finances throughout the years. Both parents believe their strained relationship has definitely impacted Justin, and quite possibly, Jeremy and Christina.

Justin remained in his mother's care until 12 years of age, when he requested to live with his father. Ms. Campbell indicated he wanted to see what things would be like with his dad and it seemed Justin and his father spent a lot of time together at sporting events, in the evenings and on the weekends.

Justin continued to live with his father until 15 years of age. At that point, Justin returned to his mother's care. Justin maintained his enrollment at Stahl until he was suspended in May, 2000. At that point, Justin and his mother made the decision not to return to Stahl since there was "no possible way" for him to bring up his failing grades. Instead, Justin enrolled in a correspondence course and completed all necessary paperwork to complete the 9<sup>th</sup> grade.

Justin's stepfather, Leroy Campbell, appears to be an active participant in his life. Justin considers Leroy to be a second father to him. I was unable to obtain much information in regards to Mr. Campbell. However, it appears that Mr. Campbell basically allows Ms. Campbell to do the parenting of her children and he remains somewhat of a neutral third party when it comes to making decisions on behalf of the children.

#### FAMILY HISTORY: (PER MARSHALL HEGNEY)

Marshall Hegney is the first to admit that his history is somewhat shaded. Mr. Hegney indicated to me that his family situation was somewhat chaotic and he was eventually kicked out of his parents' home at 13 years of age. Mr. Hegney was basically transient at that time in his life and looked to Kathy and her family for assistance and support. Mr. Hegney began using drugs/alcohol and he readily admits he was arrested on multiple occasions. Mr. Hegney also spent time at a juvenile institution on a firearm charge. Mr. Hegney loved Kathy very much and she appeared to have been a great sense of support to him at a very

young and vulnerable age. Mr. Hegney moved back in with his mother at 15-16 years of age and ultimately proposed to Kathy. Mr. Hegney indicated some hesitation in marrying Kathy, but only because he felt the military had changed her. Ms. Campbell would attribute this change as being one of a positive nature, in that she believes the military increased her strength and confidence within herself.

Mr. Hegney admits he has been both physically and emotionally abusive towards Ms. Campbell in the past. Mr. Hegney indicated to me that Ms. Campbell brought both the best and worst out of him and he felt he could not live without her. Mr. Hegney feels somewhat justified in his abusive ways, given the fact that Ms. Campbell had not been totally faithful towards him and became somewhat wild in her ways, after he had basically calmed down (Mr. Hegney reportedly stopped "partying" when Jeremy was born).

Mr. Hegney was devastated when he found out Ms. Campbell was leaving him. It took Mr. Hegney several years to recover from the loss of his family and has yet to find anyone to share his life with. Mr. Hegney expressed concern that while he had changed his life for the positive, he believes Ms. Campbell had changed her life for the worse. Mr. Hegney indicated that Ms. Campbell led a somewhat promiscuous lifestyle and neglected the children on several occasions when she went out to bars after the children went to sleep. Mr. Hegney recalls the children calling him on numerous occasions after their mother had gone out. On one occasion, Mr. Hegney recalls Christina showing up at his house in a cab, at 12 years of age, because she wanted to stay with him.

Justin returned to his father's care at 12 years of age. Justin actively involved himself in sporting activities and the weekends were generally spent at games within the community. Mr. Hegney indicated that life wasn't easy for the children at his home. Mr. Hegney expected the children to do well in school and follow the house rules. Mr. Hegney admits his rules were somewhat rigid, but believes it was in his children's best interest at the time.

Justin and his father's relationship certainly became strained over the next two and a half years. Justin's effort in school basically diminished and his behavior was less than desirable. Mr. Hegney was under the belief that Justin only went to school to socialize and was hardly interested in doing his work. Of course, Mr. Hegney "got on his son's case" and Justin spent numerous days being grounded. It seems Justin turned to drugs to address his problems and eventually requested to return to his mother's home, who in Mr. Hegney's opinion would allow him to do whatever he wanted to do. Mr. Hegney made a deal with his son that if he passed all of his classes by Spring Break; he would allow him to move back to his mother's home. Spring Break came, Justin returned to his mother's care, and Mr. Hegney later found out that he had failed all of his classes.

Ms. Campbell transported her son back and forth to Stahl once he returned to her care. Justin continued to attend Stahl until he was suspended on drug charges.

Mr. Hegney believes Ms. Campbell is a good person, but he does not believe she is a good parent. Mr. Hegney indicated that Ms. Campbell basically allows her children to come and go as they please, without consequences or questions. Mr. Hegney believes Ms. Campbell has made some extremely poor parenting decisions over the past several years.

#### **DEPENDENCY HISTORY:**

No dependency history has been reported. Justin denies being the victim of physical/sexual abuse and he denies having any history of placements in foster care.

#### **YOUTH:**

##### **School:**

Justin's school records were subpoenaed on September 7, 2000, and they were received on October 12, 2000. These records are included in social file (Volume I).

Justin was arrested and detained on August 29, 2000. Shortly thereafter, Justin was enrolled in academic services through Remann Hall under the Tacoma Public School District. Justin continues to receive academic assistance and has earned approximately 3 credits in general studies. Kelly Carone, F-pod teacher, informed me that Justin has performed well in school, without problems or concerns. Mr. Carone has provided a brief report as to Justin's participation and progress in school. This report is attached and is also included in the social file (Volume I).

Prior to his incarceration, Justin was enrolled in the 9<sup>th</sup> grade academic program through Stahl Junior High. Information included in the social file indicates that Justin was expelled from Stahl in May of 2000 for possessing drugs on school grounds. Justin was failing all of his required classes at that time.

#### **9<sup>th</sup> grade incident reports/suspensions/expulsions: (Additional information is included in the social file)**

- |          |   |
|----------|---|
| 09-23-99 | Harassment - written contract<br>Justin signed harassment contract not to physically or verbally harass Mike Meniqoz, Jonathan and Brandon Bauer. |
| 11-01-99 | Loitering - Verbal warning  |

Justin was seen leaving school campus, only to return later to ride the activity bus.

- 11-02-99 Disruption - Saturday school  
Justin was instructed not to go outside. He stood in the doorway and yelled to other students, disrupting stood in the classes in the portables.
- 11-09-99 Insubordination – after school detention  
Justin and a female student were seen coming from the gym. A teacher had sent them back from the gym to the commons area.
- 12-01-99 Misconduct - detention
- 12-01-99 Misconduct - detention
- 12-07-99 Attitude – Saturday school
- 12-10-99 Continued attitude in class – Saturday school
- 12-13-99 Disruption – 1 day detention  
Disruptive behavior in class.
- 12-15-99 Harassment -1 year written contract  
Justin engaged in verbal harassment of Sunni Hirschfeld.
- 01-05-00 Abusing hall pass - detention
- 01-11-00 Unexcused absence – Saturday school  
Called in false excuse.
- 01-21-00 Loitering – Saturday school
- 02-01-00 Loitering - Saturday school  
Second offense of Loitering.
- 02-04-00 Left class without permission.
- 02-07-00 Display of affection -1 day suspension  
Justin caught kissing Maili Acoba in the hall.
- 02-07-00 Disruption -1 day suspension  
Unsuccessful detention.

- 03-02-00 Skipping class – Saturday school  
Left class without permission
- 03-21-00 Left class without permission.
- 03-22-00 Tardy - sent letter home to parent  
used absences.
- 03-24-00 Misconduct – Saturday school  
Justin skipped out of class early but was caught by Mrs. Meines.
- 04-12-00 Disruption -1 day detention  
Justin continued to disrupt class after repeated requests to be quiet  
and stay on task.
- 05-02-00 Drugs - Emergency expulsion  
Possession of Marijuana.
- 05-02-00 Drugs - Long term suspension (32 days)  
Staff saw Justin with Desiree Kuenzi, by the pond passing a pipe  
with Marijuana. The pipe was made from a pop can. Emergency  
Expulsion was reduced to Long Term Suspension reduced to 10  
days with SAP and follow through. Withdrawn due to lack of  
residency, no credit and no proof of assessment.

**8<sup>th</sup> grade incident reports, suspensions, expulsions:**

- 10-05-98 Harassment - warned  
Justin and Adam had Josh Sealy backed up in the hallway trying to  
provoke a fight.
- 10-15-98 Insubordination - warning  
As Justin got onto the bus, he said, "shut the fuck up" and stood up  
3 times.
- 10-20-98 Disruptive behavior
- 10-22-98 Inappropriate behavior- Saturday school
- 01-25-99 Public Display of Affection - warning  
Giving PDA, despite warnings.
- 02-11-99 Disruptive - detention  
Justin was being disruptive in class and drawing attention to himself  
by taking his shoes off.

- 02-25-99      Absent from school without his father's knowledge.
- 03-04-99      Argument - detention  
Justin got into an argument with Jerry Kasper with some minimal pushing.
- 03-08-99      Abusing hall pass - Saturday school
- 03-08-99      Harassment contract entered with Justin Anderson
- 03-16-99      Throwing food in the cafeteria - 1 day Saturday school
- 03-19-99      Public Display of Affection – Saturday school
- 05-04-99      Disruption - detention  
Justin disrupted his peers by talking across the room.
- 05-06-99      Disrespect - detention  
Justin neglected to show for detention.
- 05-17-99      Destruction towards property - detention  
During a break, Justin was running through the commons and climbing on the table benches.
- 05-17-99      Unauthorized leave from class - detention  
Left to use the restroom during long detention. Abusing his pass.
- 05-26-99      Leaving class without permission - detention  
Justin left the weight room without permission.
- 05-28-99      Insubordination - detention  
Justin failed to suit up for PE.

**7<sup>th</sup> grade incident reports, suspensions, expulsions:**

- 12-08-97      Harassment contract entered between Justin and Kevin Larson
- 02-03-98      Failed to report for lunchroom duty.
- 03-05-98      Harassment contract entered between Justin and David Mulkins.
- 04-20-98      Disruptive behavior - behavioral contract  
Justin causing distractions in class and drawing attention to himself in negative ways.

05-19-98      Assaultive behavior - detention  
Justin grabbed another student by the neck on two separate occasions, causing the students face to turn red and cut off air.

**6<sup>th</sup> grade incident reports, suspensions, expulsions**

05-19-97      Altering hall pass - 1 day suspension

**4<sup>th</sup> grade incident reports, suspensions, expulsions**

11-03-95      Assaultive behavior - 2 day suspension

**Peers:**

Justin appears to associate himself with negative peers who encourage and support his anti-social behavior and drug usage.

Justin describes himself to be a leader and a follower amongst his peers, depending on the situation. Justin indicated he became "popular" while attending Stahl Junior High. This made him somewhat "lazy", and he subsequently began associating with the popular, but negative crowd. Justin indicated this group of peers frequently used drugs and it also appears that sex became an active part of Justin's life within the past year.

While residing with his father in Puyallup, Justin spent the majority of his free time with his friends and they spent their evenings at parties or just hanging out. Justin's interest and motivation to participate in sports dwindled and his drug use increased due to his reported "family problems."

Justin has a very close relationship with his sister, Kristina and they have maintained somewhat regular contact throughout his stay in detention. Justin does not get along with his brother, Jeremy, and admits his brother's choice to lead a homosexual lifestyle has not only embarrassed him, but the rest of his family as well. Justin has not maintained contact with Jeremy throughout his stay in detention and Jeremy has not contacted the probation department to request any sort of visitation privileges.

Justin moved out of his father's home in April of 2000. Justin returned to his mother's home in Tacoma, and it took some time until he established friendships in this area. Justin indicated he was somewhat scared to go outside, given that he lived within the hilltop vicinity. Eventually he met "Tiere," and the above mentioned respondents as they generally hung out at Bryant Elementary, playing basketball. Justin indicated that Terry bought him cigarettes on numerous occasions and he did not fear of any of the listed respondents.

Justin continued to associate with these individuals for approximately six weeks, up until his arrest and it appears that he may have been involved in three additional incidents involving the assault of three separate individuals.

Justin's close relationship with Terry Hunt is evident when reviewing his cellular phone records from July 15, 2000 until August 26, 2000. Cellular records indicate that Justin made approximately 48 calls to Hunt over a period of six weeks. One call was made on the approximate time and day of the assault on Mendoza and three calls were made on the day and approximate time of the Murder. It should be noted that Justin's cellular phone was listed as "Thugline".

#### **Drugs/Alcohol:**

Justin has experimented with alcohol, marijuana and shrooms. Justin's first reported use of alcohol occurred in grade school. Justin continued to use alcohol approximately once a month up until August 15, 2000. Justin began using marijuana in the 7<sup>th</sup> grade, with his brother (who introduced him to it). Justin continued to use marijuana on a weekly basis up until August 27, 2000. Justin experimented with "shrooms" on one occasion in 1999. Justin indicated to me that he generally used drugs to have a good time and take his mind off of things. Justin described this time frame in his life to be extremely stressful.

Justin has completed two separate drug/alcohol evaluations. Justin completed his first drug evaluation at Stahl Junior High in January, 2000. Justin completed his second evaluation through Horizon in August of 2000. Karen Funaro, Chemical Dependency Counselor, recommended that he attend Intensive Outpatient Treatment to address his issues. This evaluation is included in the social file (Volume I).

Justin was initially concerned about his Diversion Agreement and treatment services. When I first spoke with Justin on August 29, 2000, he expressed an interest in engaging himself in drug/alcohol services while detained. I spoke with Justin on December 4, 2000, at which time I asked what services he felt he needed to assist him in making changes with his lifestyle. At that point, Justin indicated he did not need any services, including drug/alcohol treatment. Justin related that drugs were no longer a problem for him and he did not feel they would be an issue for him in the future, with the exception of cigarette use.

#### **Mental Health/Abuse:**

Justin is not presently enrolled in formal counseling services. As previously indicated, he was so in the past to address family issues. Justin is not presently taking any prescribed medication and he has no identified mental health issues.

Justin has no history of major hospitalizations and he has no identified health issues that need to be addressed at the present time.



**Interests:**

Justin's interests include hanging out with friends, riding his bike, and playing baseball. Justin appears to be a very athletic young man, who has previously taken part in school sports and community activities. Justin has been an active member of the YMCA and he has taken part in church services while detained. Justin would like to graduate from high school and move on to a possible career in computer electronics.

Justin has no official employment history. However, he has worked with his stepfather on occasion and has landscape and carpentry skills.

**PRE-TRIAL DETENTION PROGRESS:**

Justin was arrested and detained on August 29, 2000. A Probable Cause hearing was held on August 30, 2000, at which time the Court ordered Justin's continued detention.

Justin has spent a total of 167 days in detention, and he has spent the majority of this time on Honors status. Justin has responded well to the structure of detention and he gets along well with the staff and residents. Justin has been more than willing to participate in activities and programs offered to him and he has been respectful and courteous towards myself.

Justin has received three haircuts throughout his stay in detention and has also received a physical examination in January of 2000. Justin has also received therapeutic services and support since detained.

**Incident reports:**

November 12, 2000

Peer problems in F-pod. Justin Hegney and Sean Gorr approached JDO Hammond about Brian Beasley's negative behavior. After further investigation, JDO Hammond and Supervisor William Hollonsyde decided to place Brian Beasley in another unit. Separations were put into place.

September 26, 2000

Justin was found having drugs/contraband in his room. Justin has been charged for this incident.

**Visitation while being detained:**

Leroy Campbell (stepfather) – regular visiting hours.

Christina Hegney (sister) – 3 visits approved as she moved to Hawaii 10/00.

Marshall Hegney (biological father) - regular visiting hours.

Mark Whitehill (evaluator) – one visit to conduct evaluation – per attorney.  
Carol Klingbeil (evaluator) – one visit to conduct evaluation – per attorney.

Justin's parents have visited their son on numerous occasions since August 29, 2000. Although Mr. Marshall and Ms. Campbell have their issues, they have been willing to put those issues aside for the sake of Justin. Both parents appear to love their son very much and have chosen to maintain an active role in his life. I suspect this will continue until this matter is resolved.

#### **REASONS FOR DECLINING JURISDICTION AND TRANSFERRING TO ADULT STATUS:**

- 1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.**

Justin's behavior has been spiraling downward over the past 3 years. This is evidenced by his multiple behavior/incident reports in the academic setting. Justin admits he became popular in the 9<sup>th</sup> grade, which ultimately caused him to become "lazy". Justin lost interest in his academics and his relationship with his father deteriorated to the point that Justin left his home and didn't speak to him again until his arrest.

Justin returned to his mother's care, during Spring Break, in April of 2000. Just one month later, he received his first referral to the Court (Possession of Marijuana). This incident occurred at school. Initially, Justin was expelled. However, the district later changed the expulsion to a 32-day suspension, so that Justin could continue his attendance at school while participating in drug treatment. With his mother's support, Justin failed to return to Stahl and instead, enrolled in a correspondence course. This matter was referred to the Diversion Unit, but was unsuccessfully completed given Justin's detention and inability to complete his agreement. This matter has not been charged.

Justin came back to the attention of the Pierce County Juvenile Court on May 19, 2000, on charges of Malicious Mischief in the Third Degree. Fortunately for Justin, this matter was NCF'd.

Upon interviewing Justin in detention, he indicated to me on one occasion that his curfew at his mother's home was "midnight". On a separate occasion, Justin indicated his curfew to be 11:00 p.m. and occasionally later, if approved by his mother. Justin's mother indicated to me that her curfew was 10:00 p.m. on the weekdays and 11:00 p.m. on the weekends. Ms. Campbell could not recall a specific incident where Justin broke his curfew. Ms. Campbell had no concerns regarding Justin's friends and she basically had no idea what her son was doing when out of her sight.

This does not appear to be the only incident, in which Justin assaulted or assisted in assaulting an innocent person. Justin is believed to have been present during the following incidents:

1. On August 18, 2000, Ricardo Mendoza, 14 years of age, was at Bryant Elementary with some of his friends, around 11:30 p.m. Mendoza was approached by a male, matching Hegney's description (Mendoza picked Hegney picture out of a photo line-up). Hegney allegedly asked Mendoza and his friends what they were doing. Hegney then whistled loudly, and made a call from his cellular phone. Shortly thereafter, 9 suspects came from behind the school and attempted to circle Mendoza and his friends. They started to run, but were cut off.

Mendoza was able to run from the scene, with the suspects running after him. Robert Hernandez caught Mendoza, grabbed him, and slapped him upside the head twice, telling him "don't you ever run from me!" At this point, a nearby resident intervened.

2. Immediately following his taped confession, Justin discussed case number 00-2341075 with the Officers, which occurred on August 3, 2000. Hegney indicated the victim in this case had been walking by the duck pond in Wright Park. The victim asked Hegney if he could use his cigarette lighter, which Hegney provided. Terry Hunt had looked at Hegney as if he was going to hit the man and Hegney made a cutting motion across his throat. The victim gave Hegney his lighter and walked away with Hunt walking to his rear. Hunt said, "slug bug" and punched the man, knocking him down. Perry Dunham punched the victim in the face while Robert Hernandez kicked him in the "nuts." Then Dunham began to punch the victim in the "nuts." Hegney admitted to kicking the victim in the side.
3. Elisha Thompson informed Tacoma Police Officers that Robert Hernandez, Terry Hunt, Justin Hegney, and Perry Dunham were near Division walking towards the North end. They had apparently been contemplating "beating someone up" and this someone was someone they knew that had caused them some trouble. They found this individual and Terry approached him and hit him with a skateboard. Ms. Thompson indicated the rest of the group started beating the victim up. This incident is believed to have occurred in July or August of this past year.

It appears that Justin re-located to his mother's residence in April of 2000, and it appears he was basically allowed to come and go as he pleased. Ms. Campbell previously indicated to me that her home was a "free flowing environment" and "she didn't want a lot of control," relating that respect meant more to her.

Justin's behavior in the community has seriously escalated over the past year. This offense shows an aggressive, life-threatening, pattern of behavior that can not be ignored when considering community safety. Safety of the community requires waiver in this matter.

**2. Whether the offense was committed in an aggressive, violent, premeditated or willful manner.**

The decision to find someone to attack was certainly premeditated. It was discussed prior to setting out together that evening among the co-respondents. It was a plan that had been carried about before. It was planned by the co-respondent's to knock the victim unconscious so they could not be identified. This was also the goal on previous attacks as addressed in the other counts. This attack was planned, willful, extremely violent, and conducted in an aggressive manner that resulted in a horrible tragedy.

This incident occurred on August 19, 2000. Erik Toews died as a result of the attack on August 25, 2000, six agonizing days later, due to excessive blows to his head. Toews was approached by the respondent, asked for a cigarette from respondent Spencer, then knocked to the ground by the respondents. He was severely kicked, punched, beaten and hit in the head with a blunt object. Toews was able to get up on one occasion, only to be taken down again and beaten once more. As Toews lay unconscious and unable to defend himself, Jesse Hill went through his pockets and stole some marijuana.

Later that evening, Terry Hunt bragged about doing 28 knee drops on Toews head and having swollen knuckles. Robert Hernandez also bragged of his swollen knuckles (Justin indicated that Robert was trying to get "bragging rights" from the size of his swollen knuckles). Justin Hegney and Robert Hernandez smoked some of the stolen marijuana and the others played video games.

Neither Justin nor any of his co-respondents returned to the scene of the crime to determine the extent of Mr. Toews injuries, nor did they express any remorse or regret in their taped confessions.

A few days later, the co-respondents met in Justin's garage to collaborate alibis. Justin describes in his taped statement that Terry appeared at his home the following Saturday and indicated they had been caught because the "guy had died and we made the front page." Hegney indicated they "sat in my garage and chilled and came up ....he was trying to think up things to tell."

This does not appear to be the only incident in which Justin Hegney was involved in a planned assault against someone. Although Justin has not been charged, he is believed to have been present at the following incidents when he either assaulted or assisted in the assault against someone.

3. **Whether the offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.**

This offense was against Erik Toews, a person, who was brutally attacked, beaten, kicked and hit over the head with a blunt object, until he was knocked unconscious. Toews, unable to defend himself against the 8 respondents, died six days later as a result of his injuries.

4. **The prosecutive merit of the complaint.**

Please refer to Affidavit of Probable Cause and State's Brief in Support of Motion for Declination.

5. **The desirability of trial and disposition of the entire offense in one court when the co-respondents are adults.**

Terry Hunt, co-respondent age 19 is an adult pending trial downtown. Robert Hernandez, age 16, is set for trial as an adult due to mandatory adult jurisdiction (automatic declination). Jesse Hill, age 15, is currently set for decline on March 20, 2001. Jermaine Beaver, age 15 was retained in the juvenile system, pled to an amended charge of Conspiracy, (B+) and was Manifested to age 21. The other respondents are age 13 or younger. Declination was not pursued in their cases. They are currently set for trial. Justin has both adult and juvenile co-respondents.

6. **The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.**

Justin has resided with either his mother and/or father his entire life. Justin depends on his parents to support him financially and he openly admits his past efforts to pay his own bills have been unsuccessful. Justin's mother bought him a cellular telephone in June, 2000 and she pays his bill on a monthly basis. Justin has not been financially liable for any of his responsibilities and he has no history of employment. Justin does not currently have a checking account or credit cards and he has not obtained his driver's license.

Justin's maturity, and lack thereof is indicated in his school performance, behavior in the community and drug usage. Justin appears to have many issues that need to be addressed before he can be expected to become a successful and productive member of the community. Justin clearly wants to live an adult lifestyle, and his mother has in some ways, afforded him the opportunity through the financial support and freedom. Justin's school records most certainly indicate he wants to do things his way and he wants to be in total control of most

situations. This behavior coupled with drug usage, increases Justin's risk to the community.

**7. The record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions.**

Justin first came to the attention of the Pierce County Juvenile Court on May 3, 2000. Justin was suspended from school on May 2, 2000, after he was observed passing a pipe, containing marijuana to Danielle Dana. The pipe was made from a soda pop can. Justin was initially expelled for this incident. However, school staff made the decision to change this to a 32-day suspension with the expectation that Justin complete a drug/alcohol evaluation and follow through with treatment recommendations.

This matter was subsequently referred to the Diversion program. Justin signed a Diversion agreement, which outlined the need to complete a drug/alcohol evaluation, participate in treatment services and perform community service hours. Justin completed a drug/alcohol evaluation through Horizons, and began attending drug awareness classes on August 28, 2000. Justin was arrested that evening, upon leaving treatment and he has been unable to participate in further treatment services given his incarceration. The Diversion program has forwarded this matter back to the Prosecutor's Office and charges have not been filed.

Justin came back to the attention of the Pierce County Juvenile Court on May 19, 2000. Initially, Justin was charged with Malicious Mischief in the Third Degree. Given the prior Diversion referral, the Diversion program rejected this case and forwarded it back to the Prosecuting Attorney's Office. No charges have been filed as to this matter. Justin has not been on community supervision.

Justin has not been committed to the Juvenile Rehabilitation Administration (JRA).

**8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile, through services available to the juvenile court.**

If Justin is to remain in the juvenile system, the sentence for Murder in the First Degree, is to age 21 through the Juvenile Rehabilitation Administration. Once released from JRA, neither Justin nor the community would receive the benefit of parole services. Justin would not be eligible under the juvenile system due to his age of 21. As to the drug charges, the sentence for this offense would be local sanctions, up to 12 months probation, 30 days in detention, and \$100.00

CVPA. The probation department recommends this matter be consolidated with the Murder charge, and sent to the adult system.

The community deserves the maximum protection available. If declined, Justin could still benefit services offered through the adult system with the community's safety being taken into consideration by a longer period of confinement.

**REPORT WRITTEN: 01-29-01**

## Exhibit 18



***Karil S. Klingbeil, MSW ACSW***

forensic consulting and evaluation, family violence evaluation, workplace violence consultation,  
mediation, and expert witness testimony



January 17, 2001

Wayne Fricke, Attorney  
Law Offices of Monte E. Hester, Inc. P.S.  
1008 South Yakima Ave.  
Tacoma, Washington 98405

Dear Mr. Fricke

RE: JUSTIN HEGNEY

Attached to this letter is the final forensic psychosocial summary and my responses to the Kent criteria concerning your client, Justin Hegney.

Please feel free to contact me should you have any questions or issues concerning the report. I look forward to talking with you.

I will be interviewing Justin's father and step-father in the next few day and their interviews are not included in this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karil S. Klingbeil'. The signature is fluid and cursive.

Karil S. Klingbeil MSW ACSW  
Clinical Associate Professor  
School of Social Work

Adjunct Associate Professor  
Department of Psychiatry and Behavioral Sciences  
University of Washington

Director of Social Work  
Harborview Medical Center

## JUSTIN HEGNEY-----PSYCHOSOCIAL FORENSIC SUMMARY

### INTRODUCTORY INFORMATION

I have met with Justin Hegney on two occasions at Remann Hall in Tacoma. Additionally I have interviewed his mother, Cathy Campbell, on two occasions, once in-person and once over the telephone in a lengthy interview. I also interviewed Justin's sister, Kristina, just prior to her departure for Hawaii where she plans to establish residence. I plan to interview both Justin's father and stepfather but as of this writing I have not completed those interviews.

I have also reviewed quite extensive discovery provided to me by Justin's attorney, Wayne Fricke, including police reports, autopsy reports and photographs, Justin's school records and grades as well as interviews conducted with his teachers. I have reviewed victim impact statements made by relatives and friends of the deceased, witness statements in conjunction with police investigative reports, and telephone records of various of Justin's social circle. All together the discovery compiles approximately 18 inches of materials.

### JUSTIN HEGNEY BACKGROUND

Justin was born on 6/5/85 in Spokane and resided in Colville, Washington with his family during his early years. His parents divorced when Justin was seven <sup>MC</sup> years of age and he moved with his mother to the Spanaway area. His father also moved to the Tacoma area after the divorce and became employed in the photographic equipment repair business. Although he resided with his mother as custodial parent during his early years, he has always been in frequent contact with his father. His mother remarried and moved into the Hilltop area of Tacoma while his father moved to Puyallup. In fact, at the time of the incident and his subsequent arrest, Justin had just moved back to his mother's home in Tacoma. He had been residing with his father for the last two academic years. This variable living situation is significant from my professional perspective, since it appears that Justin was more in control of it than either parent. In my interview with his sister, Kristina, she referred to Justin as a "ping-pong ball" moving back and forth frequently.

1985  
1986 - C

It appears when things got stressful with his mother, he moved to his father's residence and when things got stressful, which they often did in his father's home, he moved to his mother and step-father's residence.

Justin has three siblings, a sister, Kristina now age 18 and a brother living in Puyallup, age 21. He has a half-sister, Theresa, age 27 living in Texas, but he is not in contact with

her. His older brother, Jamie, is a waiter and is getting his life together after a significant drug problem. Justin alleges he was introduced to drugs by his brother.

### PARENTS

Cathy Campbell is employed as the manager of customer relations at Lucks Food Decorating Company in Tacoma. She is a valued employee and they are extremely supportive of her during this difficult situation with Justin. Leroy Campbell, Justin's stepfather is employed in the construction business. Justin describes a positive relationship with his mother and stepfather and indicates he is much more emotionally bonded to them. His father, he states, is rigid, strict, orders him around and limits his social activities. He opines that he has been in frequent arguments with his father and is under considerable tension and stress when living with him. He speaks of very little freedom and prefers to live with his mother who provides "rules" but is a bit more lenient and trusting.

Ms. Campbell considers Justin the "easiest of her children" to raise and says he is just your average kid. "He's easy-going, cooperative" and since he was usually home for dinner and respected the hours she put forth for curfew, she trusted his judgement with regard to friends and friendship circles. She frequently stated during the interview that she was totally taken aback by his association with the boys involved in the homicide. She had met one of the boys, Terry, purported the "leader" and thought he was considerably younger or "I wouldn't have allowed him to associate with that age person" Ms. Campbell has been extremely emotionally upset by this event and has missed considerable work as a result. She remains steadfast in her support of Justin.

Ms. Campbell further stated that while she allowed Justin to make his own friends and has always seen him as a friendly well-liked child, she did provide rules, structure and punishments if he failed the test. They would withhold privileges, he would "get grounded" and have to forfeit the cell phone, which she purchased for him. She indicated like most kids he pushed the boundaries, but never to cause undue alarm on her part. She remains baffled about Justin's association with such ruthless adolescents and is very troubled about the circumstances. She said "I have to take the blame for what has happened because I must—it is my duty" and she continues to search for reasons why.

### SUMMARY AND CONCLUSIONS

Justin is an appealing looking, rather reserved, adolescent. He was very polite and contributory during both interviews, but not as forthcoming without considerable encouragement. We spoke of the seriousness of the incident and the charges and Justin acknowledged that he was fully aware. He also knows the difference between right and wrong and stated that physical confrontation is only acceptable in cases of self-defense. He knows clearly that it was not "ok to do what those guys were doing i.e. beating on unsuspecting, innocent people." Justin stated that he tried to dissuade them but that Terry did it for the fun of it and the excitement of seeing the expressions on their (the victims') faces." He said that robbery was never part of it and was never mentioned when the group got together. In other words it was more diabolical than robbery. Even after he left

Tacoma more frequently and stayed in Puyallup, when he returned to the area and socialized with the group, he knew they continued their terrible exploits from the conversation they were having.

His sister, Kristina, stated that all his life, Justin wanted to be in the "in-group" whatever that was. She stated that Justin is a follower, that he never picked fights and basically just watched the particular activity. Kristina was critical of Justin's smoking marijuana and about his, at times, rebellious behavior. She kept saying, "what are you doing?" She said her father knew he was "headed" for trouble because he never seemed to listen to the voice of reason and was in constant battles with his father. She stated, however, that Justin is not the violent type and in fact referred to him as a "pacifist." She said it takes a lot to get Justin riled up. She did admit to his being a "mouthy kid", would get kicked out of class because of his smart and rebellious ways. She said the divorce between her parents seemed to more negatively affect Justin than the other two children

School records clearly indicate that Justin was failing and that his grades had been below average for several years. Learning seemed to be a definite struggle and his lack of cooperation and application to learning contributed to the matter. There are instances of his negative and uncooperative ways; even belligerent mannerisms and some teachers were clearly challenged by his presence. He is described by family members and in some school notations as a "follower", however, and not the leader of the pack. What he did appeared more as attention-getting behavior to which both his sister and mother would agree. He certainly has engaged in risk-taking behavior including his drug use, and he enjoys being on the edge with those individuals who get in "trouble." Nevertheless, it is a giant leap from this kind of non-conforming behavior to his charge of Murder One. While Justin admits that running with the Tacoma group was the most risk-taking of his behaviors, he had no idea of the severity of the abuse they were administering to Mr. Tows.

His sister stated that Justin is easily liked, makes friends easily and gets along with just about all people. He has enjoyed many girl friends and said the girls are "crazy over him". She said Justin liked to be the center of attention and this sometimes works to his disfavor. By contrast, she listed his deficits as being a "follower", that he tries too hard to please, and is a "crowd-pleaser" and a "crowd hanger-on". She stated that he doesn't form his own opinion, rather usually follows someone else's opinion and orders. In short, he is a leader's dream, in my opinion, because he is a clear follower, and is very compliant about group activities.

This description seems to express his involvement with the group of Tacoma boys. He enjoyed being on the "edge," having a group of friends/acquaintances he could be with. He was both in awe of and afraid of Terry, the apparent leader of this loose knit group and it was his custom to "go along with the crowd." He realizes, now, that this was the wrong do with which to associate and has had time to ponder the consequences of his association. Kristina, Justin's sister indicated that "you could talk Justin into doing anything and my brother and I really took advantage of him when he was younger." While Kristina criticized his non-conforming behavior, she sees him as a definite

follower, not an instigator and as a pacifist who has tremendous needs of acceptance and pleasing others. While Justin has been a non-cooperative child, especially in the school setting, there is nothing that I have been able to determine that provides historical precedence for being abusive to others. He is guilty of bad judgement, going along with "the program," and keeping issues to himself for fear of incriminating himself. He certainly, in my opinion, has immature thinking and has difficulty in problem solving. He is into risk taking behavior and not anticipating the outcomes of his judgements. With this in mind, Justin is in need of continuing his counseling intervention, probably with someone that uses cognitive restructuring as a treatment modality and someone who can provide very clear limits and expectations. The same holds true for his living environment.

I will be attempting to contact both his father and stepfather for further information.

Re: Justin Hegney

### KENT CRITERIA

- 1) the seriousness of the alleged offense to the community and whether the protection of the community requires waiver

This is a very serious offense, however, Justin Hegney was only peripherally involved, meaning that while he was present with others at the attack on the victim, he was several feet, literally a block away.

This information source is Justin Hegney, others who will testify to his lack of involvement, and the interviews I have conducted with collateral witnesses, all of whom tell the same rendition of events.

- 2) whether the alleged offense was committed in an aggressive violent, premeditated or willful manner.

This criterion does not apply to Justin Hegney for reason cited in # 1. Generally the offense, of course, was committed in an aggressive, violent and willful manner.

- 3) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.

Same rationale as in # 1 and # 2.

- 4) whether there is evidence upon which a grand jury may be expected to return an indictment

### Legal Response

- 5) the desirability of trial and disposition of the entire offense in one court where the juvenile's associates in the alleged offense are adults who will be charged with a crime...

Justice would be better served, in my clinical opinion, if Justin were to be tried in the juvenile system based on information below. His involvement should be separated from the other persons involved, some of whom will be tried in superior court. He admits association with this group of kids.

6) the sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

Justin, in my opinion, is an immature, unsophisticated, adolescent who has poor social skills and limited coping skills. He, interestingly enough, presents with a fairly laid back attitude and is pleasant and conversationally respectful so family and friends are at a loss to explain his involvement in this crime and /or his association with this particular set of associates involved in the crime. I feel his intelligence is compromised and he may be in the lower average category. Whether his intellectual ability is greater or not remains a matter for psychometric testing. His performance, behaviors, understanding language in an interviewing situation all appear to be less than his developmental age. His school performance has been considerably under par and he has failed most subjects. Again, whether this is due to clinical depression, and lack of initiative in learning or an intellectual deficit basically or a combination of all of these points is yet to be determined.

His background and upbringing are significant. His parents were divorced when Justin was very young and impressionable. He resided with his mother for several years, most recently residing with his father in Puyallup and then very recently with his mother just prior to the arrest. He went back and forth continually regardless of living arrangement. Partly because of his poor school performance, he fell into idle activities and began using alcohol and marijuana. Just prior to his incarceration he was admitted to Horizon Center for rehabilitation. He also has some involvement with authorities for marijuana possession and vandalism but he has never been charged and was able to provide evidence that he was not involved in vandalism.

His father has been extremely punitive and strict. His mother less-so but has provided rules, and structure and a set of expectations such as being home for dinner, being home at a certain hour during a school night/non school night. Family members are amazed about his involvement with the counter-culture group of kids.

He is described by family as an easy-going, "middle of the road kid." One who is easily led, easily influenced and yearns for acceptance. It is more important for him to "belong" and be accepted, than to go against the wishes of the group, even if they are involved in illegal activities. His ability to stand up for what is right, even though he may know the answer, "goes out the window" when faced with loss of the peer support and camaraderie. In short, he is a "leader's delight" because he is known as a loyal follower. He is attracted to older adolescents and young adults who live "on the edge" and is unable to evaluate critically whether the specific group activity or activities will land him in trouble-or he may ignore the "red flags" because he doesn't want to think about the consequences. Denial and minimization play a big role.

7) the record and previous history of the juvenile, including previous contacts with the Youth Aid Div., other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this court, or prior commitments to juvenile institutions.

No Record

8) the prospects of adequate protection of the public and the likeliness of reasonable rehabilitation of the juvenile by the use of procedures, services, and facilities currently available to the juvenile court.

Justin has been in Horizon Center for substance abuse rehabilitation prior to his arrest. This rehabilitation should be a part of the package that is carved out for him in terms of whatever punishment is meted out. I believe that Justin is no threat to the public. He has never been a threat and has never been involved in aggressive, negative physical altercations. Nevertheless, he needs counseling on several levels: a) substance abuse counseling/treatment b) interpersonal counseling with attention to coping and skill development c) schooling with some tutorial guidance d) close supervision by adult caretakers, preferably one set of parents that can provide rules, structure, expectations and discipline while providing love and understanding. While parental visitations are important to maintain, Justin requires a stable, consistent and structured living situation that is superimposed on him and one he doesn't dictate. That is, he should not be allowed to go to one or the other parental household when he is so inclined but rather on a scheduled basis.

He clearly needs to work on decision-making skills and develop those skills related to consequences of his actions not only for himself, but on others around him.



## Exhibit 19



STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
1949 South State Street, N27-1 • Tacoma, Washington 98405-2850

February 23, 2001

Wayne -  
FYI

TCV

Tara Varela, Probation Officer  
Pierce Co. Juvenile Court  
5501 Sixth Ave.  
Tacoma, Wa. 98406

RE: Justin Hegney Case No: 27D534135

Dear Ms. Varela:

Enclosed, please find the records you requested. Confidential information regarding reference to Children's Protective Services has been deleted from the copies. In addition, we are unable to provide you with copies of reports not generated by our staff, such as psychological evaluations, criminal history reports and reports from drug/alcohol treatment programs. Confidential information was deleted per RCW 42.17.310(1).

To petition for review, write to:

**Public Records Officer**  
**Department of Social and Health Services**  
**P.O. Box 45800**  
**Olympia, WA 98504-5800**

I hope this information is of assistance to you. Please feel free to contact me if you have questions or need further information at (253) 983-6220.

Sincerely,

Bob Matz, Social Service Program Manager III  
Public Disclosure Consultant

BM:dmw



CASE NAME: HEGLE CASE NO. 270534/135  
SENDING WORKER: BENDI EN DATE REC'D BY WORKER: 10-11-91  
SENDING SUPERVISOR: K. ALUZY INITIALS AK DATE CLOSED BY WORKER: 12-12-

TR [] RECORD TRANSFERRED IN OFFICE

RECEIVING WORKER \_\_\_\_\_

RECEIVING SUPERVISOR'S INITIALS \_\_\_\_\_

TO [] RECORD TRANSFERRED - OUT OF OFFICE

RECEIVING OFFICE \_\_\_\_\_ OFFICE NO. \_\_\_\_\_

**ACTION CODES: (Circle One)**

- |                             |  |                                  |
|-----------------------------|--|----------------------------------|
| 11. Reached Age of Majority | 19. Adoption Completed                 | 32. Referred to Another Agency   |
| 12. Deceased                | 20. Tribe Assumes Jurisdiction         | 33. No further Need of Services  |
| 13. Moved from Service Area | 21. Worker Re-Assignment               | 34. No Abuse/Neglect Exists      |
| 14. Refused Services        | 28. Rtn'd to Parent/Guardian           | 43. Serv Comp/Homebuilders/PH II |
| 15. Service Completed       | 29. Risk/Conflict Low or Absent        | 44. Closed/Child on the Run      |
| 18. Unable to Locate        | 30. Risk Med/High - DCFS Svc Not Poss. | 45. Guardianship Established     |
|                             |  | Other: _____                     |

**CHECK THE FOLLOWING FOR COMPLETION (as appropriate):**

**1. NARRATIVE SECTION**

- ☐ Face Sheet (DCFS 14-24)
- ☐ Complaint Form (DSHS 14-260)
- ☐ Summary Assessment completed or
- ☐ Service Episode Narrative completed

Indicate overall risk at closure ( ) H ( ) M ( ) L

**2. DOCUMENT SECTION**

- ☐ Letter to Parent/Resource Letter
- ☐ Law Enforcement Referral
- ☐ Medical/Family Background (DSHS 13-41)
- ☐ Interstate Compact
- ☐ Birth Certificate
- ☐ Health & Education Record (DSHS 15-209a)
- ☐ School Records
- ☐ SSA Card/Documents/Applications
- ☐ Notified: \_\_\_\_\_

**3. FINANCIAL SECTION**

- ☐ Misc. DSHS 154/159, Worker ID Correct
- ☐ Referral to Financial Services (DSHS 13-226)
- ☐ IV-E Eligibility Packet
- ☐ SSPS 3258, 3260, 3257 opened, A/A

**4. LEGAL SECTION**

- ☐ Child Pl/Legal Hist (DSHS 15-92)
- ☐ Petition
- ☐ Motion for Custody
- ☐ Custody Order
- ☐ Medical Order
- ☐ Shelter Care Order
- ☐ Notice and Summons
- ☐ Findings of Fact/Order of Dependency
- ☐ Dispositions
- ☐ Dependency Review Orders
- ☐ ISP
- ☐ Voluntary Placement Agreement
- ☐ LICWAC Reviews
- ☐ Child Protective Team Reviews
- ☐ Other: \_\_\_\_\_

**5. DUE DATES**

- ☐ Court Review Date \_\_\_\_\_
- ☐ Admin. Review Date \_\_\_\_\_
- ☐ Other: \_\_\_\_\_

**CONFIDENTIAL**

CASE NAME: Hg 'ey ASE NO: 27D534135  
 SENDING WORKER: John Price (66PTD) DATE RECEIVED BY WORKER: 4-1-93  
 SENDING SUPERVISOR: Netzel-Gasper INITIALS: mv DATE CLOSED BY WORKER: 7-12-

TR ☐ RECORD TRANSFERRED IN OFFICE  
 RECEIVING SUPERVISOR \_\_\_\_\_ RECEIVING SUPS INITIALS \_\_\_\_\_  
 RECEIVING WORKER \_\_\_\_\_ YES ☐  
 TRANSFERRED IN CAMIS \_\_\_\_\_ LEP ☐

☐ CASE TRANSFERRED IN CAMIS OUT OF OFFICE \_\_\_\_\_

☐ RECORD TO GO TO ☐ CONFIDENTIAL FILE OR ☐ RETENTION FILE

TR ☐ RECORD TRANSFERRED - OUT OF OFFICE

**ACTION CODES:** (Circle One)

- |                             |  |                                 |
|-----------------------------|--|---------------------------------|
| 11. Reached Age of Majority | 19. Adoption Completed                 | 32. Referred to Another Agency  |
| 12. Deceased                | 20. Tribe Assumes Jurisdiction         | 33. No further Need of Services |
| 13. Moved from Service Area | 21. Worker Re-Assignment               | 34. No Abuse/Neglect Exists     |
| 14. Refused Services        | 28. Rtn'd to Parent/Guardian           | 43. Serv Comp/Homebuilding      |
| 15. Service Completed       | 29. Risk/Conflict Low or Absent        | 44. Closed/Child on the Return  |
| 18. Unable to Locate        | 30. Risk Med/High - DCFS Svc Not Poss. | 45. Guardianship Established    |
|                             |  | Other: _____                    |

**CHECK THE FOLLOWING FOR ALL CASE TRANSFERS**

**1. NARRATIVE SECTION**

- ☒ Face Sheet (DCFS 14-24)  
☒ Complaint Form (DSHS 14-260)  
☒ Summary Assessment completed OR  
☒ Service Episode Narrative completed  
 (Indicate overall risk at closure ( ) H ( ) M ( ) L)

- ☐ Notice and Summons  
☐ Findings of Fact/Order of Dependency  
☐ Dispositions  
☐ Dependency Review Orders  
☐ ISP  
☐ Health & Education Rcd (DSHS 15-1)  
☐ Voluntary Placement Agreement  
☐ Child Protective Team Reviews

**2. DOCUMENT SECTION**

- ☐ Law Enforcement Referral  
☐ Interstate Compact  
☐ Birth Certificate  
☐ SSA Card/Documents/Applications  
☐ Documentation of Relative Search  
☐ L.E.P. ( ) yes ( ) no DSHS 4-001  
☐ Adoption 1341 Completed

**5. NATIVE AMERICAN SECTION**

- (Indian Child Welfare)  
☐ LICWAC Reviews  
☐ Tribal Search  
☐ Ancestry Chart  
☐ Notification to Tribes  
☐ \_\_\_\_\_  
☐ \_\_\_\_\_

**3. FINANCIAL SECTION**

- ☐ Misc. DSHS 154/159, Worker ID correct  
☐ Referral to Financial Services (DSHS 13-226)  
☐ IV-E Eligibility Packet  
☐ SSPS 3258, 3260, 3257 opened  
☐ Ethnicity and Language code completed

**6. DUE DATES**

- ☐ Court Review Date  
☐ Admin. Review Date  
☐ LICWAC Review Date  
☐ Other \_\_\_\_\_

**4. LEGAL SECTION**

- ☐ Child P1/Legal Hist (DSHS 15-92)  
☐ Petition  
☐ Motion for Custody  
☐ Custody Order  
☐ Medical Order  
☐ Shelter Care Order

CASE NAME: Hegney MarshallCASE # 534135SENDING WORKER: JKDATE RECEIVED BY WORKER: 12/13/95SENDING SUPERVISOR: JKKINITIALS JKK DATE CLOSED BY WORKER 12/13/95TR ☐ RECORD TRANSFERRED IN OFFICE

RECEIVING SUPERVISOR \_\_\_\_\_

RECEIVING SUPS INITIALS \_\_\_\_\_

RECEIVING WORKER \_\_\_\_\_

YES  
LEP ☐NO  
☐

TRANSFERRED IN CAMIS \_\_\_\_\_

☐ CASE TRANSFERRED IN CAMIS OUT OF OFFICE \_\_\_\_\_☐ RECORD TO GO TO ☐ CONFIDENTIAL FILE OR ☐ RETENTION FILETR ☐ RECORD TRANSFERRED - OUT OF OFFICE**ACTION CODES: (Circle One)**

- |                             |                                 |                                  |
|-----------------------------|---------------------------------|----------------------------------|
| 11. Reached Age of Majority | 19. Adoption Completed          | 32. Referred to Another Agency   |
| 12. Deceased                | 20. Tribe Assumes Jurisdiction  | 33. No further Need of Services  |
| 13. Moved from Service Area | 21. Worker Re-Assignment        | 34. No Abuse/Neglect Exists      |
| 14. Refused Services        | 28. Rtd to Parent/Guardian      | 43. Serv Comp/Homebuilders/PH II |
| 15. Service Completed       | 29. Risk/Conflict Low or Absent | 44. Closed/Child on the Run      |
| 18. Unable to Locate        | 30. Risk Med/High -             | 45. Guardianship Established     |
|                             | DCFS Svc Not Poss.              | Other: _____                     |

**CHECK THE FOLLOWING FOR ALL CASE TRANSFERS****1. NARRATIVE SECTION**

- ☒ Face Sheet (DCFS 14-24)  
☒ Complaint Form (DSHS 14-260)  
☒ Summary Assessment completed OR  
☐ Service Episode Narrative completed  
(Indicate overall risk at closure ( ) H ( ) M ( ) L

- ☐ Notice and Summons  
☐ Findings of Fact/Order of Dependency  
☐ Dispositions  
☐ Dependency Review Orders  
☐ ISP  
☐ Health & Education Rcd (DSHS 15/209a)  
☐ Voluntary Placement Agreement  
☐ Child Protective Team Reviews

**2. DOCUMENT SECTION**

- ☐ Law Enforcement Referral  
☐ Interstate Compact  
☐ Birth Certificate  
☐ SSA Card/Documents/Applications  
☐ Documentation of Relative Search  
☐ L.E.P. ( ) yes ( ) no DSHS 4-001  
☐ Adoption 1341 Completed

**5. NATIVE AMERICAN SECTION**

(Indian Child Welfare)

- ☐ LICWAC Reviews  
☐ Tribal Search  
☐ Ancestry Chart  
☐ Notification to Tribes  
☐ Written ☐ Phone  
☐ \_\_\_\_\_

**3. FINANCIAL SECTION**

- ☐ Misc. DSHS 154/159, Worker ID correct  
☐ Referral to Financial Services (DSHS 14-226)  
☐ IV-E Eligibility Packet  
☐ SSPS 3258, 3260, 3257 opened  
☐ Ethnicity and Language code completed

**6. DUE DATES**

- ☐ Court Review Date  
☐ Admin. Review Date  
☐ LICWAC Review Date  
☐ Other

**4. LEGAL SECTION**

- ☐ Child P1/Legal Hist (DSHS 15-92)  
☐ Petition  
☐ Motion for Custody  
☐ Custody Order  
☐ Medical Order  
☐ Shelter Care Order

CPT Staffing Required:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If "Yes," were recommendations followed/completed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Worker's Signature:	<u>[Signature]</u>	
Date:	<u>7/20/96</u>	

# FAMILY FACE SHEET

CLIENT INFORMATION (HEAD OF HOUSEHOLD OR CHILD IN PLACEMENT)					CASE NUMBER (L.O.-PROG-BASIC-SUFFIX) <b>27-1-534135</b>					DATE COMPLETED <b>12-92</b>						
1. NAME <span style="float:right">LAST</span> <b>KATHY HEGNEY</b>																
CROSS REFERENCE A. K. A. OTHER ID										3. MARITAL STATUS <input type="checkbox"/> Married <input type="checkbox"/> Single <input checked="" type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Widowed						
4. MAIDEN NAME					5. U.S. CITIZEN		6. PRIMARY LANGUAGE		7. SEX		8. RACE <b>C</b>		9. BIRTHDATE <b>12-22-56</b>		10. SOCIAL SECURITY NUMBER	
11. DATE <b>12/92</b>		12. CURRENT ADDRESS <b>1711 S. 7th Tr. 98405</b>				13. TELEPHONE <b>572-7928</b>		14. DATE		15. CURRENT ADDRESS				16. TELEPHONE		
FAMILY DATA																
FATHER	NAME <b>MARSHALL HEGNEY</b>					LAST KNOWN ADDRESS <b>17416 - 157th St. E. #51 PUYALLUP 98373</b>					MARITAL STATUS					
	LAST KNOWN EMPLOYER OR INCOME SOURCE										WORK TELEPHONE					
	SOCIAL SECURITY NUMBER			BIRTHDATE		DATE OF DEATH		RACE		U.S. CITIZEN		6. PRIMARY LANGUAGE		HOME TELEPHONE <b>539-035</b>		
MOTHER	NAME <b>Kathy Hegney</b>					LAST KNOWN ADDRESS <b>1711 S. 7th TACOMA WA 98405</b>					MARITAL STATUS					
	LAST KNOWN EMPLOYER OR INCOME SOURCE										WORK TELEPHONE					
	SOCIAL SECURITY NUMBER			BIRTHDATE		DATE OF DEATH		RACE		U.S. CITIZEN		6. PRIMARY LANGUAGE		HOME TELEPHONE		
STEP PARENT	NAME					LAST KNOWN ADDRESS					MARITAL STATUS					
	LAST KNOWN EMPLOYER OR INCOME SOURCE										WORK TELEPHONE					
	SOCIAL SECURITY NUMBER			BIRTHDATE		DATE OF DEATH		RACE		U.S. CITIZEN		6. PRIMARY LANGUAGE		HOME TELEPHONE		
NAMES OF SIBLINGS (UNDER AGE 18)					SEX	BIRTHDATE	U.S. CITIZEN	RACE	RELATION FULL/HALF/STEP	CHILD'S PRESENT LOCATION				CHILD'S LEGAL STATUS		
1. KRISTINA HEGNEY					F	7-2-82		C								
2. JUSTIN HEGNEY					M	6-5-85		C								
3. JEREMY HEGNEY					M	10-1-79		C								
4.																
5.																
6.																
OTHER SIGNIFICANT DATA (RELATIVES, OTHER HOUSEHOLD MEMBERS, OTHER ABSENT PARENTS, ETC.)																

## (A) REFERRAL, WORKER, AND SUPERVISOR DETAIL

Referral Date : 02/12/1991 Time: 14:27 Intake Worker ID: 752-04PM09  
Intake Decision: 3rd Party / No Response / NS / No Risk Tag  
Assigned Supvsr: 752-04NR00 NOBLE,RALPH Case ID:  
Assigned Worker: none Assign Date:  
L/E Agency: Yes ( ) No ( ) L/E Agency #: \_\_\_\_\_  
L/E Agency: \_\_\_\_\_

## (B) PRIMARY CARETAKER INFORMATION

Name : SLOAM, LYNN Phone : (253) 847-0459  
Address: 20116 56TH AVENUE COURT EAST Message: none  
SPANAWAY, WA 98387

## (C) PERSONS IDENTIFIED IN REFERRAL

Name (Last, First MI)	DOB	Age	Sex	Relationship	Rol	Rac	Hsp	Lng	LEP
SLOAM, TAYLOR	11/14/1984	16y	M	Reference person	V	999	Y	UN	U
SLOAM, SCOTT			M	Bth/Adpt Parent	O	999	Y	UN	U
SLOAM, LYNN			F	Bth/Adpt Parent	O	999	Y	UN	U
HEGNEY, JUSTIN M	06/05/1985	15y	M	Friend/Neighbor	S	800	Y	EN	N

## (D) CHILD ABUSE/NEGLECT ISSUES AND ALLEGATIONS OR CONCERNS

## SEXUAL ABUSE

Incident Address: SHINING MOUNTAIN ELEM.  
SPANAWAY, WA 98387

Inc. Date: 02/11/1991  
Inc. Time: 10:30

Allegations : REFERRANT STATES THAT "SCOTT REPORTED THAT JUSTIN HEGNEY, A CLASSMATE OF TAYLOR'S COERCED HIM INTO THE BATHROOM AT SCHOOL DURING RECESS TIME ON 2/11/91 AT 10:30A.M. THERE JUSTIN PUT HIS FINGER , TOILET PAPER, COTTON, TOY MISSILES, AND HIS PEE-PEE INTO TAYLOR'S RECTUM."  
FATHER FURTHER INDICATED THAT HE COULD NOT GET HIS SON TO TAKE A BATH LAST NIGHT, HE CRIED FOR AN HOUR, THEN HE TOLD HIS DAD ABOUT INCIDENT."  
FATHER TOOK CHILD TO DOCTOR AUSTIN, WHO FOUND SOME IRRITATIO N.

(E) RISK FACTORS/ADDITIONAL INFORMATION

Child Characteristics:  
NOTHING UNUSUAL

History of CA/N:  
NONE FOUND

Caretaker Characteristics:  
WILLING TO PROTECT

Socio Economic (Environmental) Factors:  
UNK

Additional Risk Factors:  
UNK

Overall Risk Factor:

(F) REFERRER INFORMATION

Referrer : [REDACTED]  
Address : [REDACTED] Phone : [REDACTED]  
Message: [REDACTED]

Referrer Type : [REDACTED]  
Intake Mode : [REDACTED]  
Info Source : [REDACTED]

Referrer Notes: [REDACTED]

Worker Danger : [REDACTED]

Person Notes : [REDACTED]

(G) CHILDREN'S SCHOOL INFORMATION

(H) VICTIM UNIQUE ATTRIBUTES:

Victim : SLOAM, TAYLOR  
Is The Victim In Imminent Danger? No  
Does The Victim Need Medical Treatment? No  
Does The Victim Need A Medical Evaluation? No

Worker Danger : Undocumented degree of danger

Person Notes :



Intake Summary Report for Referral  
CHILD PROTECTIVE SERVICES  
Referral ID - 86991

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I) SUBJECT UNIQUE ATTRIBUTES:

Subject : HEGNEY, JUSTIN M

Worker Danger : Undocumented degree of danger

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J) SUFFICIENCY SCREEN INFORMATION:

YES Is there sufficient identifying information to locate the child?

NO Was the alleged perpetrator a caretaker of the child or acting  
In Loco Parentis; or is the parent negligent in protecting  
The Child From Further CA/N?

YES Is there a specific allegation of CA/N that meets the legal  
And/Or WAC Definition?

Is there a risk factor which places the child in danger of  
imminent harm?

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K) RISK TAG INFORMATION:

Risk Tag : No Risk Tag Documented

Basis For Risk:

Worker Notes :

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(A) REFERRAL, WORKER, AND SUPERVISOR DETAIL

Referral Date : 10/11/1991 Time: 14:00 Intake Worker ID: 752-12BB72  
Intake Decision: Accept / No Response / NS / No Risk Tag  
Assigned Supvsr: 752-12KA77 KALUZNY, ANN Case ID: 27D5341350  
Assigned Worker: none Assign Date:  
L/E Agency: Yes ( ) No ( ) L/E Agency #: \_\_\_\_\_  
L/E Agency: \_\_\_\_\_

(B) PRIMARY CARETAKER INFORMATION

Name : CAMPBELL, KATHY Phone : (253) 572-7928  
Address: 1711 SO 7TH Message: none  
TACOMA, WA

(C) PERSONS IDENTIFIED IN REFERRAL

Name (Last, First MI)	DOB	Age	Sex	Relationship	Rol	Rac	Hsp	Lng	LEP
HEGNEY, JUSTIN M	06/05/1985	15y	M	Bth/Adpt Sibling	O	800	Y	EN	N
HEGNEY, KRISTINA L	07/02/1982	18y	F	Bth/Adpt Sibling	O	800	Y	EN	N
CAMPBELL, KATHY J	12/22/1956	44y	F	Bth/Adpt Parent	O	800	Y	EN	N
HEGNEY, JERAMY D	10/01/1979	21y	M	Reference person	L	800	Y	EN	N

(D) CHILD ABUSE/NEGLECT ISSUES AND ALLEGATIONS OR CONCERNS

Incident Address: 20426 14TH AVE E Inc. Date: 10/11/1991  
SPANAWAY, WA 98387 Inc. Time: 14:00

Concerns : TC FR MO REQUESTING FAMILY COUNSELING. SON OUT OF CONTROL.  
HE IS ANGRY ALL THE TIME, NEVER MINDS, TREATS OTHERS BADLY,  
NO FEAR OF MO, ALWAYS ARGUES AND YELLS, AND GETTING WORSE.  
PTS DIVORCED 4 YRS AGO AND JERAMY VISITS FA TWICE A MONTH.  
FA NOT SUPPORTIVE OF MO.

(E) RISK FACTORS/ADDITIONAL INFORMATION

Child Characteristics:

History of CA/N:

Caretaker Characteristics:

Socio Economic (Environmental) Factors:

Additional Risk Factors:

Overall Risk Factor:

(F) REFERRER INFORMATION

No Call Back Requested

Name : Unknown  
Referrer Type : Other--  
Intake Mode : Telephone  
Info Source :

(G) CHILDREN'S SCHOOL INFORMATION

Child(ren): HEGNEY, JUSTIN M

Grade:

School : STAHL JR HIGH  
Address : 9610 168th St. E.  
PUYALLUP, WA 98373

Phone: (253)840-8881

-----  
Child(ren): HEGNEY, KRISTINA L

Grade: 5

School : BRYANT  
Address : 717 S. GRANT  
TACOMA, WA 98405

Phone: (253)571-1383

-----  
Child(ren): HEGNEY, JERAMY D

Grade:

School : ROGERS, GOV. JOHN, HIGH S.  
Address : 12801 - 86TH AVENUE E.  
PUYALLUP, WA 98373

Phone: (253)841-8717

(H) VICTIM UNIQUE ATTRIBUTES:

(I) SUBJECT UNIQUE ATTRIBUTES:

Subject Information available for CPS referrals only.

(J) SUFFICIENCY SCREEN INFORMATION:

Is there sufficient identifying information to locate the child?

Was the alleged perpetrator a caretaker of the child or acting  
In Loco Parentis; or is the parent negligent in protecting  
The Child From Further CA/N?

Is there a specific allegation of CA/N that meets the legal  
And/Or WAC Definition?

Is there a risk factor which places the child in danger of  
imminent harm?

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Intake Summary Report for Referral  
FAMILY RECONCILIATION SERVICES  
Referral ID - 180567

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5) RISK TAG INFORMATION:

Risk Tag : No Risk Tag Documented

Basis For Risk:

Worker Notes :

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REFERRAL HISTORY

(A) REFERRAL, WORKER, AND SUPERVISOR DETAIL

Referral Date : 11/30/1992 Time: 11:45 Intake Worker ID: 752-21KS32  
Intake Decision: Accept / Non-Emergent / HS / 3 - Moderate  
Assigned Supvsr: 752-06ND00 COOPER,DAWN Case ID: 27D5341350  
Assigned Worker: none Assign Date:  
L/E Agency: Yes ( ) No ( ) L/E Agency #: \_\_\_\_\_  
L/E Agency: \_\_\_\_\_

(B) PRIMARY CARETAKER INFORMATION

Name : CAMPBELL, KATHY Phone : (253)572-7928  
Address: 1711 SO 7TH Message: none  
TACOMA, WA

(C) PERSONS IDENTIFIED IN REFERRAL

Name (Last, First MI)	DOB	Age	Sex	Relationship	Rol	Rac	Hsp	Lng	LEP
HEGNEY, JUSTIN M	06/05/1985	15y	M	Bth/Adpt Sibling	V	800	Y	EN	N
HEGNEY, KRISTINA L	07/02/1982	18y	F	Reference person	V	800	Y	EN	N
CAMPBELL, KATHY J	12/22/1956	44y	F	Bth/Adpt Parent	S	800	Y	EN	N
HEGNEY, JERAMY D	10/01/1979	21y	M	Bth/Adpt Sibling	O	800	Y	EN	N
HEGNEY, MARSHALL	estimated	44y	M	Bth/Adpt Parent	R	800	Y	EN	N

(D) CHILD ABUSE/NEGLECT ISSUES AND ALLEGATIONS OR CONCERNS

PHYSICAL NEGLECT

Incident Address: 1711 S. 7TH  
TACOMA, WA 98405

Inc. Date:  
Inc. Time:

Allegations : ON 11/24/92, DAD GOT CALL FROM KRISTINA AT ABOUT 10 PM. SHE SAID THAT SHE AND JUSTIN HAD GONE TO BED ABOUT 8. MOM WAS DRINKING BEER AND WATCHING TV AT THE TIME. JUSTIN GOT UP ABOUT 10 TO GO TO THE BATHROOM AND FOUND THAT MOM WAS NOT THERE. KIDS CALLED DAD, AFRAID AND CRYING. ARE FEARFUL OF THE NEIGHBORHOOD, WHERE THERE HAS BEEN A LOT OF FIGHTING, POLICE ACTIVITY, AND PEOPLE WALKING BY HOUSE IN THE ALLEY. DAD CALLED THE POLICE TO HAVE THEM CHECK ON KIDS AND WENT TO THE HOME. POLICE GAVE HIM THE KIDS. MOM DID NOT CALL DAD TO INQUIRE ABOUT KIDS TILL THE NEXT MORNING AT ABOUT 6 AM. DAD KEPT KIDS OVER THANKSGIVING WEEKEND, BUT TODAY MOM AND HER ATTORNEY CAME TO KIDS' SCHOOL AND INSISTED THEY GO BACK TO MOM. DAD WAS THREATENED WITH LEGAL ACTION IF HE DID NOT RELEASE THEM. DAD THINKS LEAVING KIDS ALONE IS A COMMON OCCURANCE. HE FOUND THEM ALONE ABOUT 3 YRS. AGO, WHEN OLDEST CHILD, JERAMY, AGE 13, WAS STILL WITH MOM (MOM KICKED HIM OUT OF HER HOME AND HE WENT TO DAD A FEW MONTHS AGO.) MOM HAD TAKEN THE PHONE OFF THE HOOK AND LEFT THE TV ON SO KIDS WOULD THINK SHE WAS HOME AND NO ONE COULD CALL IN. JERAMY SAYS MOM OFTEN LEFT KIDS ALONE AT NIGHT. ON VETERANS' DAY, WHEN KIDS OUT OF SCHOOL AND MOM AT WORK, KIDS WERE ALONE ALL DAY. DAD IS WONDERING WHAT MOM PLANS TO DO

WHEN KIDS ARE OUT OF SCHOOL FOR HOLIDAYS AND MOM HAS TO WORK. KIDS DO NOT LIKE BEING LEFT ALONE AND FEEL UNSAFE. TODAY GIRL TOLD DAD THAT SHE WILL BE IN TROUBLE WITH MOM FOR CALLING DAD. SAYS THE KIDS ARE TOLD NOT TO TELL DAD OR OTHERS WHAT GOES ON. DAD SAYS MOM IS A HEAVY DRINKER, IS DRUNK A LOT OF THE TIME. GOES TO BARS, HAS MANY DIFFERENT BOYFRIENDS, IS NOT DISCRETE AT HOME WITH HER SEXUAL BEHAVIOR, ACCORDING TO JERAMY.

(E) RISK FACTORS/ADDITIONAL INFORMATION

Child Characteristics:

KRISTINA DOES WELL IN SCHOOL. DOES A LOT OF THE COOKING AND CARE OF JUSTIN. JUSTIN NOT DOING WELL IN SCHOOL, PARTICULARLY HIS READING. KIDS ARE FED AND CLOTHED OK. JERAMY AND MOM HAD LOTS OF CONFLICTS AND MOM KICKED HIM OUT OF THE HOME.

History of CA/N:

Caretaker Characteristics:

PARENTS DIVORCED, MOM HAS CUSTODY. DAD SAYS MOM COMES FROM ALCOHOLIC HOME, ALTHOUGH SHE DENIES IT. MOM HAS BEER AND WINE IN THE REFRIG. ALL THE TIME. HAS HAD SEVERAL LIVE-IN BOYFRIENDS THAT MOVE IN WHEN MOM HARDLY KNOWS THEM. PRESENT BOYFRIEND PLAYS IN A BAND AT LESLIE'S II, AND MOM GOES THERE TWICE A WEEK TO TAKE COUNTRY WESTERN DANCING LESSONS. DAD SAYS MOM IS A VERY SLICK TALKER AND WILL GIVE LIP SERVICE TO ANYONE WHO DEALS WITH HER. WILL TELL THAT PERSON WHAT THEY WANT TO HEAR, THEN DO WHAT SHE PLEASES, SO DAD IS CONCERNED THAT SHE WILL NOT LISTEN TO CPS RECOMMENDATIONS.

Socio Economic (Environmental) Factors:

MOM WORKS FOR LUCK'S COMPANY, POSSIBLY IN P.R.

Additional Risk Factors:

Overall Risk Factor:

(F) REFERRER INFORMATION

Referrer : HEGNEY, MARSHALL  
Address : 7416 157TH ST E #51  
PUYALLUP, WA  
Call Back Requested  
Phone : (253) 539-0355  
Message: none  
Referrer Type : Parent/Guardian  
Intake Mode : Telephone  
Info Source : Victim Disclosure

Worker Danger : Unknown degree of danger

Person Notes :

(G) CHILDREN'S SCHOOL INFORMATION

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Child(ren): HEGNEY, JUSTIN M

Grade:

School : STAHL JR HIGH  
Address : 9610 168th St. E.  
PUYALLUP, WA 98373

Phone: (253)840-8881

-----  
Child(ren): HEGNEY, KRISTINA L

Grade: 5

School : BRYANT  
Address : 717 S. GRANT  
TACOMA, WA 98405

Phone: (253)571-1383

-----  
Child(ren): HEGNEY, JERAMY D

Grade:

School : ROGERS, GOV. JOHN, HIGH S.  
Address : 12801 - 86TH AVENUE E.  
PUYALLUP, WA 98373

Phone: (253)841-8717

(H) VICTIM UNIQUE ATTRIBUTES:

---

Victim : HEGNEY, JUSTIN M

Is The Victim In Imminent Danger? No  
Does The Victim Need Medical Treatment? No  
Does The Victim Need A Medical Evaluation? No

Worker Danger : Undocumented degree of danger

Person Notes :

-----  
Victim : HEGNEY, KRISTINA L

Is The Victim In Imminent Danger? Unknown  
Does The Victim Need Medical Treatment? Unknown  
Does The Victim Need A Medical Evaluation? Unknown

Worker Danger : Undocumented degree of danger

Person Notes : 4/14/99 STAFF @ HUGS, TUGS & LUVS. SENT CH TO BOB MCGREGOR.  
5/27/99 sent clearance ltr.

Intake Summary Report for Referral

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CHILD PROTECTIVE SERVICES

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I) SUBJECT UNIQUE ATTRIBUTES:

Subject : CAMPBELL, KATHY J

Worker Danger : Unknown degree of danger

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J) SUFFICIENCY SCREEN INFORMATION:

YES Is there sufficient identifying information to locate the child?

YES Was the alleged perpetrator a caretaker of the child or acting  
In Loco Parentis; or is the parent negligent in protecting  
The Child From Further CA/N?

YES Is there a specific allegation of CA/N that meets the legal  
And/Or WAC Definition?

NO Is there a risk factor which places the child in danger of  
imminent harm?

---

K) RISK TAG INFORMATION:

Risk Tag : Moderate

Basis For Risk: SUPERVISION - 3 \_\_\_\_\_ FEAR OF CARETAKER - 3  
CHRONICITY - 3  
SUBSTANCE ABUSE - 3

Worker Notes :

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## (A) REFERRAL, WORKER, AND SUPERVISOR DETAIL

Referral Date : 04/01/1993 Time: 08:30 Intake Worker ID: 752-21PW75  
Intake Decision: Accept / Emergent / HS / 3 - Moderate  
Assigned Supvsr: 752-06ND00 COOPER, DAWN Case ID: 27D5341350  
Assigned Worker: none Assign Date:  
L/E Agency: Yes ( ) No ( ) L/E Agency #: \_\_\_\_\_  
L/E Agency: \_\_\_\_\_

## (B) PRIMARY CARETAKER INFORMATION

Name : CAMPBELL, KATHY Phone : (253) 572-7928  
Address: 1711 SO 7TH Message: none  
TACOMA, WA

## (C) PERSONS IDENTIFIED IN REFERRAL

Name (Last, First MI)	DOB	Age	Sex	Relationship	Rol	Rac	Hsp	Lng	LEP
HEGNEY, JUSTIN M	06/05/1985	15y	M	Bth/Adpt Sibling	U	800	Y	EN	N
HEGNEY, KRISTINA L	07/02/1982	18y	F	Reference person	V	800	Y	EN	N
CAMPBELL, KATHY J	12/22/1956	44y	F	Bth/Adpt Parent	S	800	Y	EN	N
HEGNEY, JERAMY D	10/01/1979	21y	M	Bth/Adpt Sibling	U	800	Y	EN	N

## (D) CHILD ABUSE/NEGLECT ISSUES AND ALLEGATIONS OR CONCERNS

## PHYSICAL ABUSE

Incident Address: 1711 S. 7 ST.  
TACOMA, WA 98405

Inc. Date: 03/31/1993  
Inc. Time:

Allegations : KRISTINA HAS TOLD THE REF. THAT LAST NIGHT HER MOM SLAPPED HER AROUND AND KNOCKED HER GLASSES OFF. THE CHILD SAYS THAT SHE IS AFRAID TO GO HOME AFTER SCHOOL TODAY. KRISTINA SAYS THAT HER MOM GETS PHYSICAL WITH HER AS OFTEN AS TWO TIMES A WEEK. THE REF. CANNOT SEE ANY BRUISING ON KRISTINA, BUT IS CONCERNED BECAUSE THE FREQUENCY AND INTENSITY OF THE ATTACKS ON KRISTINA SEEM TO BE INCREASING. REF. NOTES THAT AN OLDER BOY IN THE HOME USED TO BE THE FOCUS OF MOM'S PHYSICAL ATTACKS. NOW THAT HE IS OUT OF THE HOME, MOM HAS SEEMED TO HAVE TURNED HER ATTENTION TO KRISTINA. REF. IS REQUESTING CPS EVALUATION OF THE SITUATION BEFORE SCHOOL IS OUT TODAY.

(F) RISK FACTORS/ADDITIONAL INFORMATION

Child Characteristics:  
NO DETAILS

History of CA/N:  
SEE PRIORS. REF BELIEVES THAT AN OLDER SON WAS REMOVED FROM  
THE HOME DO TO MOM'S PHYSICAL ABUSE.

Caretaker Characteristics:  
PARENTS ARE DIVORCED. DAD ALSO HAS SOME FORM OF CUSTODIAL  
RIGHTS WITH THE CHILDREN. REF. SAYS THAT MOM MAY HAVE A  
PROBLEM WITH ALCOHOL, BUT HAS NO HARD INFORMATION ON THIS.

Socio Economic (Environmental) Factors:  
NO DETAILS

Additional Risk Factors:  
NO.

Overall Risk Factor:

(F) REFERRER INFORMATION \*\*\* C O N F I D E N T I A L \*\*\*

Referrer : [REDACTED] Phone : [REDACTED]  
Address : [REDACTED] Message: [REDACTED]

Referrer Type : [REDACTED]  
Intake Mode : [REDACTED]  
Info Source : [REDACTED]

Worker Danger : [REDACTED]

Person Notes : [REDACTED]

(G) CHILDREN'S SCHOOL INFORMATION

Child(ren): HEGNEY, JUSTIN M Grade:  
School : STAHL JR HIGH Phone: (253) 840-8881  
Address : 9610 168th St. E.  
PUYALLUP, WA 98373

-----  
Child(ren): HEGNEY, KRISTINA L Grade: 5  
School : BRYANT Phone: (253) 571-1383  
Address : 717 S. GRANT  
TACOMA, WA 98405

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Child(ren): HEGNEY, JERAMY D Grade:

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CHILD PROTECTIVE SERVICES  
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School : ROGERS, GOV. JOHN, HIGH S.  
Address : 12801 - 86TH AVENUE E.  
PUYALLUP, WA 98373

Phone: (253)841-8717

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(H) VICTIM UNIQUE ATTRIBUTES:

Victim : HEGNEY, KRISTINA L  
Is The Victim In Imminent Danger? Unknown  
Does The Victim Need Medical Treatment? Unknown  
Does The Victim Need A Medical Evaluation? Unknown

Worker Danger : Undocumented degree of danger

Person Notes : 4/14/99 STAFF @ HUGS, TUGS & LUVS. SENT CH TO BOB MCGREGOR.  
5/27/99 sent clearance ltr.

---

(I) SUBJECT UNIQUE ATTRIBUTES:

Subject : CAMPBELL, KATHY J

Worker Danger : Unknown degree of danger

---

(J) SUFFICIENCY SCREEN INFORMATION:

YES Is there sufficient identifying information to locate the child?  
YES Was the alleged perpetrator a caretaker of the child or acting  
In Loco Parentis; or is the parent negligent in protecting  
The Child From Further CA/N?  
YES Is there a specific allegation of CA/N that meets the legal  
And/Or WAC Definition?  
NO Is there a risk factor which places the child in danger of  
imminent harm?

---

(K) RISK TAG INFORMATION:

Risk Tag : Moderate

Basis For Risk: F. SLAPPING CHILD IN FACE-3  
N. CHRONICITY-3  
O. VICTIMIZATION OF OTHER CHILDREN-3

Worker Notes :

(A) REFERRAL, WORKER, AND SUPERVISOR DETAIL

Referral Date : 12/08/1995 Time: 14:00 Intake Worker ID: 725-04MR69  
Intake Decision: Accept / Non-Emergent / HS / 3 - Moderate  
Assigned Supvsr: 752-05KL00 KALINOWSKI, LINDA Case ID: 27D5341350  
Assigned Worker: none Assign Date:  
L/E Agency: Yes ( ) No ( ) L/E Agency #: \_\_\_\_\_  
L/E Agency: \_\_\_\_\_

(B) PRIMARY CARETAKER INFORMATION

Name : HEGNEY, MARSHALL Phone : (253) 539-0355  
Address: 7416 157TH ST E #51 Message: none  
PUYALLUP, WA

(C) PERSONS IDENTIFIED IN REFERRAL

Name (Last, First MI)	DOB	Age	Sex	Relationship	Rol	Rac	Hsp	Lng	LEP
CAMPBELL, KATHY J	12/22/1956	44y	F	Bth/Adpt Parent	U	800	Y	EN	N
HEGNEY, JUSTIN M	06/05/1985	15y	M	Bth/Adpt Sibling	U	800	Y	EN	N
HEGNEY, JERAMY D	10/01/1979	21y	M	Bth/Adpt Sibling	U	800	Y	EN	N
HEGNEY, KRISTINA L	07/02/1982	18y	F	Reference person	V	800	Y	EN	N
HEGNEY, MARSHALL	estimated	44y	M	Bth/Adpt Parent	S	800	Y	EN	N

(D) CHILD ABUSE/NEGLECT ISSUES AND ALLEGATIONS OR CONCERNS

Incident Address: 7416 157TH ST E #51 Inc. Date:  
PUYALLUP, WA Inc. Time:

Allegations : see ref #631454.  
concerns that marshall has sexually abused a 7 y.o. child  
while in yakima, wa.  
ref indicated that marshall has a daughter that lives with  
him and that she is at risk of being sexually abused.  
marshall and christine are the only people that live at  
7416 157th st e #51 in puyallup.

(E) RISK FACTORS/ADDITIONAL INFORMATION

Child Characteristics:  
none reported.

History of CA/N:  
previous concern of marshall abusing a child.

Caretaker Characteristics:  
concerns that marshall has abused a child.

Socio Economic (Environmental) Factors:  
marshall has custody of a young girl.

Additional Risk Factors:

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CHILD PROTECTIVE SERVICES  
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Overall Risk Factor:

(F) REFERRER INFORMATION \*\*\* C O N F I D E N T I A L \*\*\*

Referrer : [REDACTED] Phone : [REDACTED]  
Address : [REDACTED] Message: [REDACTED]

Referrer Type : [REDACTED]  
Intake Mode : [REDACTED]  
Info Source : [REDACTED]

Worker Danger : [REDACTED]

(G) CHILDREN'S SCHOOL INFORMATION

Child(ren): HEGNEY, JUSTIN M Grade:  
School : STAHL JR HIGH Phone: (253)840-8881  
Address : 9610 168th St. E.  
PUYALLUP, WA 98373

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Child(ren): HEGNEY, JERAMY D Grade:  
School : ROGERS, GOV. JOHN, HIGH S. Phone: (253)841-8717  
Address : 12801 - 86TH AVENUE E.  
PUYALLUP, WA 98373

-----  
Child(ren): HEGNEY, KRISTINA L Grade: 5  
School : BRYANT Phone: (253)571-1383  
Address : 717 S. GRANT  
TACOMA, WA 98405

(H) VICTIM UNIQUE ATTRIBUTES:

Victim : HEGNEY, KRISTINA L  
Is The Victim In Imminent Danger? Unknown  
Does The Victim Need Medical Treatment? Unknown  
Does The Victim Need A Medical Evaluation? Unknown

Worker Danger : Undocumented degree of danger

Person Notes : 4/14/99 STAFF @ HUGS, TUGS & LUVS. SENT CH TO BOB MCGREGOR.  
5/27/99 sent clearance ltr.

FSUM1P  
/23/2001 07:42

Intake Summary Report for Referral  
CHILD PROTECTIVE SERVICES  
Referral ID - 631505

Page: 3

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1) SUBJECT UNIQUE ATTRIBUTES:

Subject : HEGNEY, MARSHALL

Worker Danger : Unknown degree of danger

Person Notes :

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1) SUFFICIENCY SCREEN INFORMATION:

YES Is there sufficient identifying information to locate the child?

YES Was the alleged perpetrator a caretaker of the child or acting  
In Loco Parentis; or is the parent negligent in protecting  
The Child From Further CA/N?

YES Is there a specific allegation of CA/N that meets the legal  
And/Or WAC Definition?

NO Is there a risk factor which places the child in danger of  
imminent harm?

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1) RISK TAG INFORMATION:

1) Tag : Moderate

asis For Risk:

Worker Notes :

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(A) REFERRAL, WORKER, AND SUPERVISOR DETAIL

Referral Date : 09/25/1997 Time: 14:59 Intake Worker ID: 752-07CD06  
Intake Decision: Info Only / No Response / NS / No Risk Tag  
Assigned Supvsr: 752-07WL00 WIGGS, LYDIA Case ID:  
Assigned Worker: none Assign Date:  
L/E Agency: Yes ( ) No ( ) L/E Agency #: 97-256-0531  
L/E Agency: TACOMA POLICE DEPART

(B) PRIMARY CARETAKER INFORMATION

Name : CAMPBELL, KATHY Phone : (253) 572-7928  
Address: 1711 SO 7TH Message: none  
TACOMA, WA

(C) PERSONS IDENTIFIED IN REFERRAL

Name (Last, First MI)	DOB	Age	Sex	Relationship	Rel	Rac	Hsp	Lng	LEP
CAMPBELL, KATHY J	12/22/1956	44y	F	Bth/Adpt Parent	O	800	Y	EN	N
HEGNEY, JUSTIN M	06/05/1985	15y	M	Bth/Adpt Sibling	O	800	Y	EN	N
HEGNEY, JERAMY D	10/01/1979	21y	M	Reference person	V	800	Y	EN	N
CAMPBELL, LEROY	08/25/1957	43y	M	Step Parent	S	800	Y	EN	N
JENKS, CURTIS			M	Friend/Neighbor	U	999	Y	EN	N

(D) CHILD ABUSE/NEGLECT ISSUES AND ALLEGATIONS OR CONCERNS

SEXUAL ABUSE

Incident Address: 1711 SO 7TH  
TACOMA, WA

Inc. Date: 09/13/1997  
Inc. Time: 13:18

Allegations : JERAMY HEGNEY CAME TO HIS MOTHER TODAY AND EXPLAINED LEROY GOT HIM DRUNK ABOUT A YEAR AGO, THEN TRIED TO FORCE JERAMY'S HEAD DOWN TO SUCK ON LEROY.

JERAMY ALSO TOLD HIS MOTHER THAT OVER THE COURSE OF A YEAR AND HALF LEROY HAD OFFERED HIM AND SHOWED HIM MARIJUANA APPROX 10 TIMES.

JERAMY WAS ASKED WHAT HE DID WHEN LEROY PUSHED HIS HEAD DOWN AND HE SAID HE SPUN AWAY FROM HIM AND RAN OUT AND PLAYED WITH OTHER KIDS.

L/E ASKED JERAMY IF HE EVER TOOK UP HIS STFA'S OFFER TO WORK THEN GET STONED. JERAMY SAID NO.

MOTHER STATED CURTIS JENKS HAD BEEN IN THEIR WEDDING ABOUT 5 YEARS AGO AND WAS ALWAYS AROUND, USUALLY DRUNK.

JERAMY WAS TALKING WITH JUSTIN ABOUT HOW CURTIS WAS THE BIGGEST MARIJUANA SUPPLIER IN SUMNER. L/E ASKED HIM HOW THEY KNEW THIS. JUSTIN SAID CURTIS OWNS SEVERAL HOMES ON MAIN STREET IN SUMNER AND HE LIKES RIFLES. ONE IN PARTICULAR

JUSTIN DESCRIBED WAS ONE MAYBE 17" LONG THAT JUSTIN WAS TOLD BY CURTIS IT WAS A MILITARY SEMI AUTO. JUSTIN SAID LEROY, CURTIS AND JERAMY WENT SHOOTING ABOUT 4 MONTHS AGO. JUSTIN GOT TO SHOOT THIS 17" GUN. HE SAID HE DEPRESSED THE TRIGGER ONCE AND THE GUN FIRED 3 ROUNDS. HE ALSO SAID IT HAD HOLES IN THE END OF THE BARREL.

MOTHER SAID LEROY MOVED OUT 9/9/97 AND NEVER SAID ONE WORD WHY. SHE SAID TO HEAR THIS NOW WAS VERY TROUBLING TO HER. SHE SAID SHE FOUND OUT ABOUT CURTIS DEALINGS IN SUMNER FROM HER KIDS THAT WOULD GO WITH LEROY TO CURTIS HOUSE AND ON OUTINGS.

---

(E) RISK FACTORS/ADDITIONAL INFORMATION

Child Characteristics:  
TEENAGER.

History of CA/N:  
IN CAMIS.

Caretaker Characteristics:  
PROTECTIVE.

Socio Economic (Environmental) Factors:

Additional Risk Factors:

Overall Risk Factor:

---

(F) REFERRER INFORMATION

No Call Back Requested

Referrer : FORD, RANDY  
Address : TPD  
TACOMA, WA

Phone : (253) 573-6602  
Message: none

Referrer Type : Law Enforcement Officer  
Intake Mode : Mail  
Info Source : First-Hand Knowledge

Referrer Notes: MAIL IN REPORT FROM TPD DATED 9/13/97.

Worker Danger : Undocumented degree of danger

Person Notes : BADGE 147



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(G) CHILDREN'S SCHOOL INFORMATION

Child(ren): HEGNEY, JUSTIN M

Grade:

School : STAHL JR HIGH  
Address : 9610 168th St. E.  
PUYALLUP, WA 98373

Phone: (253)840-8881

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Child(ren): HEGNEY, JERAMY D

Grade:

School : ROGERS, GOV. JOHN, HIGH S.  
Address : 12801 - 86TH AVENUE E.  
PUYALLUP, WA 98373

Phone: (253)841-8717

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(H) VICTIM UNIQUE ATTRIBUTES:

Victim : HEGNEY, JERAMY D

Is The Victim In Imminent Danger? No

Does The Victim Need Medical Treatment? No

Does The Victim Need A Medical Evaluation? No

Worker Danger : Undocumented degree of danger

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(I) SUBJECT UNIQUE ATTRIBUTES:

Subject : CAMPBELL, LEROY

Worker Danger : Undocumented degree of danger

---

(J) SUFFICIENCY SCREEN INFORMATION:

YES Is there sufficient identifying information to locate the child?

NO Was the alleged perpetrator a caretaker of the child or acting  
In Loco Parentis; or is the parent negligent in protecting  
The Child From Further CA/N?

YES Is there a specific allegation of CA/N that meets the legal  
And/Or WAC Definition?

NO Is there a risk factor which places the child in danger of  
imminent harm?

FSUM1P  
/23/2001 07:42

Intake Summary Report for Referral  
CHILD PROTECTIVE SERVICES  
Referral ID - 822718

Page: 4

ISK TAG INFORMATION:

isk Tag : No Risk Tag Documented

asis For Risk:

orker Notes :

---

# SERVICE EPISODE RECORD

CASE NAME

HEGHEY

CASE NUMBER

WORKER

BENDIXEN

Date/\*Code

A COMPLETE SOCIAL SERVICE EPISODE SHALL INCLUDE IN SEQUENCE THESE FIVE ITEMS:  
1. IDENTIFIED PROBLEMS(S) (I.P.), 2. INDIVIDUAL SERVICE PLAN (I.S.P.), 3. NARRATIVE (NARR.),  
4. EVALUATION OF PLAN (EVAL. OF PL), 5. DISPOSITION (DISP.).

IFP

MO REQUESTED FAMILY COUNSELING  
SON, JERAMY, OUT OF HER  
CONTROL. HE IS ANGRY ALL THE  
TIME, DOESN'T MIND, TREATS  
OTHERS BADLY, ALWAYS ARGUES  
& YELLS & IS GETTING WORSE.

ISP

MO WILL BRING JERAMY  
INTO OFFICE FOR FRS  
ASSESSMENT

10-11-91

OV

W/MO & SON: JERAMY IS  
VERY BRIGHT. ADMITS TO  
BEING INAPPROPRIATE AT  
TIMES. REALIZES HE DOES  
LOSE CONTROL OF HIS TEMPER.  
VISITS FA EVERY OTHER  
WK-END & FA DOES PUT  
JERAMY'S MO DOWN. HE  
resents HER DIVORCING HIM.  
MO SAID SHE DIVORCED HUSBAND  
BECAUSE IS WAS PHYS ABUSIVE  
TOWARDS HER. DISCUSSED  
ANGER & DIFFERENT WHYS

\*Codes

HV=Home Visit w/Client  
TC=Telephone Contact

OI=Office Interview w/Client  
CC=Collateral Contact

TO AVOID LOSING CONTROL  
& DIFFERENT DISCIPLINE  
METHODS. JERAMY RELUCTANTLY  
AGREED TO PHASE II COUNSELING.

10-14-91

TL

TO GLMH: MADE PHASE II  
REFERRAL.

12-12-91

EVAL

PHASE II FAIRLY SUCCESSFUL.  
FAMILY LEARNED WAYS TO  
CONTROL THEIR ANGER,  
INCREASED RESPECT BETWEEN  
FAMILY MEMBERS, & MO  
LEARNED MORE EFFECTIVE  
PT'ING SKILLS. REF'D ON  
FOR ADDITIONAL COUNSELING  
AT GLMH & PEOPLE'S  
CHRISTIAN COUNSELING.

DISP

CASE CLOSED.

Bill Bendix

revised  
Ann Valenzuela

# SERVICE EPISODE RECORD

[illegible]

**\*Codes**

HV=Home Visit w/Client  
TC=Telephone Contact

OI=Office Interview w/Client  
 CC=Collateral Contact

04/08/93 14:00

## Action Log Report

Page: 1

Case ID:27D534135-0 Stat:C File:HEGNEY,KATHY

752-06ND00(Sup/OP)

NA Supporting Narrative  
Created By --> PRICE, JOHN

Action Date: 04/08/93 Time: 13:22  
206-593-5096 Scan: 462-5096

04-01-93--IP--Emergent case assigned alleging physical abuse SV--Interviewed 10 yr. old Kristina at Bryant Elem. with her teacher, Ms. Carver and Vice-Principal present. Child reported blows to head and fear of returning home. S/W notified TPD and Officer Hager, #258 interviewed and placed child and her younger brother, Justin in PC. S/W transport to Receiving home # 156. After being placed in PC Kristina attempted to recant, said she wanted to be placed with her father and would never report again.

OI--Ms. Hagney came to DCFS and discussed issues with S/W. S/W informed her that it would take time to investigate before a decision to return could be made.

TC--S/W discussed issues with father. Father cooperative and helpful--if strongly opinionated on ex-wives behavior.

HV--Transported childrens clothes to receiving home. Discussed safety issues with children. Kristina now feels an obligation to return home because of her mother's feelings. Justin feels safe to return but does not like fighting between mother and Kristina.

EVAL--Kristina has used conflict between parents to tell each what they want to hear in order to manipulate them to her advantage. In no small measure this placement appears to be the result of Kristina attempting to manipulate the system not unlike the manner in which she manipulates her parents.

04-02-93--OI--Mother signed contract to participate in counseling and parenting classes. S/W returned children to mother's home with understanding that they would visit Father on 04-03-93 IAW parenting plan.

04-05-93--CC--Arranged for participation and funding for anger mgmt. counseling thru Renewal Counseling. Father has agreed to attend as well under the significant other rate.

04-08-93--CC--Father has contacted Mr. Schmidt at Renewal as agreed but not Mother. Wrote mother a letter and hand delivered since she has had phone recorder off and has not been answering calls.

END OF SERVICE EPISODE REPORT

## DIVISION OF CHILDREN AND FAMILY SERVICES(DCFS)

07/02/93

Summary Assessment - 21046

CPSRASPJ

Case ID: 27D5341350

page:

1

Prsn ID:00483382 HEGNEY,KRISTINAL

Input:7/2/93

Assess ID:00021046

Case ID:27D534135-0 Stat:0 File:HEGNEY,KATHY

752-06PJ10(CPS/OP)

Assessment -&gt; stat: C input date: 7/2/93

Worker -&gt; ofc: 752 wrkr: 06PJ10

S/A CMPL DT:

Findgs Code: F Overall Risk: 1

## I. Risk Factors Identified During Investigation

0 - no risk	3 - moderate risk	9 - insufficient information
1 - low risk	4 - moderately high	N - not applicable
2 - moderatelt low	5 - high risk	matrix 1st position = female
		2nd position = male

## \*\* Child Characteristics \*\*

- 3 Child Age Risk Level
- 0 Disability/Development
- 3 Behavioral Problems
- 1 Self Protection
- 1 Fear of Caretaker/Home Environment

## \*\* Severity of Child Abuse/Neglect (CAN) \*\*

- 0 Dangerous Acts
- 1 Physical Injury/Harm
- 9 Emotional Harm/Abuse
- 0 Medical Care
- 0 Basic Needs
- 0 Supervision
- 0 Hazards In Home
- 9 Sexual Contact

## \*\* Frequency of Abuse \*\*

- 3 Chronicity of CAN

## \*\* Caretaker Characteristics \*\*

- 1 0 Victimization of Other Children
- 1 1 Mental/Physical/Emotional Imprmt
- 9 9 Substance Abuse
- 2 2 Hist of Domestic Viol/Assal Behav
- 9 9 Hist of CAN As A Child
- 1 1 Parenting Skill/Knowledge
- 0 0 Nurturance
- 0 0 Recognition of Problem
- 1 1 Protection of Child
- 0 0 Cooperation With Agency

## \*\* Parent/Child Relationship \*\*

- 1 1 Response To Child's Behavior
- 0 0 ATTACHMENT/BONDING
- 1 1 Child's Role In Family

## \*\* Social Economic Factors \*\*

- 1 1 Stress On Caretaker

0 0 Employment Status of Caretaker  
0 0 Social Support  
0 0 Economic Resources of Caretaker

**\*\* Perpetrator Access \*\***

5 5 Access To/Responsibility For Child

**II. Summary Assessment Text Using Risk Factors**

A. Summary of Service Episodes for 00/00/00 - 00/00/00  
Service Episodes Not Requested For Report

B. Summary of CA/N:

10 yr. old girl alleges her mother was physically abusive and she feared for her safety in the home. Child and her 7 yr. old brother were placed in PC by TPD. The information/evidence of physical abuse was not sufficient to warrant a reasonable determination of CA--However, the evidence of chronic conflict between the parents and the mother's yelling and threatening behavior was sufficient to reasonably support a finding that emotional abuse had occurred.

C. Summary of Risk Factors 1 - 3:

D. Summary Of Risk Factors 4 Or 5:

E. Major Risk Factors Indicative of Future CA/N:

Chronicity of family dysfunction was evidenced by prior CPS and FRS referrals. The children were being brought into the parents issues and were being used and using the opportunity to increase the level of family conflict. Both parents showed an inability to control their anger and act as responsible parents. Both parents were quick to minimize, rationalize, and blame the other for their problems.

F. Caretaker/Parent Strengths And Protective Factors:

G. Discuss Interaction of CA/N, Risk Factors and Strengths:

The child quickly recanted on her allegations when she found that she could not manipulate the system to be placed with her father. The out of home placement seemed to be an attention getter for both parents and they agreed to enter into Family Renewal Counseling's anger management program and parenting classes. Both successfully completed the 10 wk. program and appeared to gain valuable insights on how to conduct their relationship to the children's best interests in the future. Based on their progress in the comprehensive anger management program, which has a parenting component, the S/W dropped the requirement



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for parenting classes. The family seems to have grown  
beyond behaviors that constitute CA/N and this case is not  
expected to reopen to CPS.

III. DISPOSITION

Dcfcas Stat: CASE OPEN

Actn date code/desc	Rsn code/desc
12/29/92 CL Case Closure	033 NO FURTHER NEED OF SERVICES
12/1/92 OP Case Opening	004 REFRL ACPTD FOR INVESTIGATION
12/12/91 CL Case Closure	043 SERV COMP/HOMEBUILDERS/PH 11
10/11/91 OP Case Opening	004 REFRL ACPTD FOR INVESTIGATION

\*\* This Case Has Been Open Over 90 Days \*\*

\*\*\* End of Report \*\*\*

se ID: 27D5341350 HEGNEY,MARSHALL Stat: 0

Prsn ID:00483382 HEGNEY,KRISTINA L

Input:7/24/96 Assess ID:00116059

Assessment -&gt; Stat: Closure

Findings: Founded

Office: 752

Worker Id: 05GN57

Overall Risk Level: 1

## I. RISK FACTORS IDENTIFIED DURING INVESTIGATION

- |                    |                     |                              |
|--------------------|---------------------|------------------------------|
| 0 - no risk        | 3 - moderate risk   | 9 - insufficient information |
| 1 - low risk       | 4 - moderately high | N - not applicable           |
| 2 - moderately low | 5 - high risk       |                              |

## \*\* Child Characteristics \*\*

- 1 Age
- 0 Physical, Mental, or Social Development
- 0 Behavioral Issues
- 1 Self Protection
- 0 Fear of Caretaker or Home Environment

## \*\* Severity of Child Abuse/Neglect (CA/N) \*\*

- 0 Dangerous Acts
- 0 Extent of Physical Injury or Harm
- 0 Extent of Emotional Harm or Damage Exhibited by Child
- 0 Adequacy of Medical and Dental Care
- 0 Provision for Basic Needs
- 0 Adequacy of Supervision
- 0 Physical Hazards/Dangerous Objects in the Home/Living Environment
- 0 Sexual Abuse and/or Sexual Exploitation
- 0 Exploitation (non-sexual)

## \*\* Chronicity of Child Abuse/Neglect \*\*

- 0 Frequency of Abuse/Neglect

Caretaker 1      Caretaker 2  
MARSHALL HEGNEY..FA.

## \*\* Caretaker Characteristics \*\*

- 5 N Victimization of Other Children by Caretaker
- 0 N Mental, Physical or Emotional Impairment of Caretaker
- 5 N Deviant Arousal
- 9 N Substance Abuse by Caretaker
- 9 N History of Domestic Violence and Assaultive Behavior
- 9 N History of Abuse or Neglect as a Child
- 0 N Parenting Skills and Knowledge
- 0 N Nurturance
- 5 N Recognition of Problem
- N N Protection of Child by Non-Abusive Caretaker
- 0 N Cooperation with Agency

## \*\* Caretaker-Child Relationship \*\*

Case ID: 27D5341350 HEGNEY,MARSHALL Stat: 0

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- 0 N Response To Child's Behavior or Misconduct
- 0 N Attachment and Bonding
- 0 N Child's Role In Family
- 9 N Child is Pressured to Recant or Deny
- 0 N Personal Boundary Issues
- 0 N Parental Response to Abuse

**\*\* Social Economic Factors \*\***

- 9 N Stress On Caretaker
- 0 N Employment Status of Caretaker
- 0 N Social Support for Caretaker
- 0 N Economic Resources of Caretaker

**\*\* Perpetrator Access \*\***

- 0 N Access to or Responsibility for Child

**II. Summary Assessment Text Using Risk Factors****A. Summary of CA/N:**

REF. ALLEGING RISK TO CHRISTINA AS FATHER MARSHALL  
HEGNEY ARRESTED FOR CHILD MOLEST OF OTHER RELATIVE..

**B. Major Risk Factors Indicative of Future CA/N:**

FATHER HAS BEEN CHARGED WITH CHILD MOLEST..

**C. Discuss Interaction of CA/N, Risk Factors and Strengths:**

CHRISTINA VERY WELL ADJUSTED YOUNG LADY..VERY BRIGHT ATTRACT  
IVE CHILD.. NO DISCLOSURES OF S/A..  
VERY SURPRISED THAT CPS WOULD BE INTERVIEWING HER..  
STATES SHE LOVES HER FATHER VERY MUCH..GETS ALONG  
WITH HIM BETTER THAN HER MOTHER RIGHT NOW..TWO  
BROTHERS LIVING WITH MO.. NO REASON TO SUSPECT THIS  
CHILD HAS BEEN ABUSED..

**D. Case Disposition**

Risk of CA/N continues; case remains open for service under  
contract or legal intervention.

**E. Summary of Service Episodes for 00/00/00 - 00/00/00**  
Service Episodes Not Requested For Report**\*\*\* End of Report \*\*\***

## Exhibit 20

IN RE THE PERSONAL RESTRAINT OF	}	CAUSE NO.
JUSTIN HEGNEY,		
Petitioner.		CERTIFICATION OF KRISTINA MYERS

1. I am Justin Hegney's older sister. I was born on July 2, 1982. I lived with Justin and my brother Jeramy when I was growing up and I have personal knowledge of the contents of this certification.

3. Justin was two years old when my parents divorced. My mother eventually moved to Tacoma and my dad was in Puyallup. The three children (Jeramy, Justin and me) would frequently move back and forth from my mother's house to my father's house. My father was very strict and regimented, while my mother was easy going and negligent. Because my father was very strict and would impose punishments or ground the kids, it

1 ultimately chased us away as well. My mother was a push-over and so it was easy for us to go  
2 back to mom whenever they wanted to do something that my father wouldn't do. It wasn't  
3 even my mother just allowing them more freedom, but rather my mother would let the us do  
4 things to spite dad. For example, I remember situations where my father had grounded Justin  
5 or did not allow him to go to a party. Justin would go over to our mother's house and would  
6 ask her if he could go to the same party and my mother would allow him, knowing that he had  
7 been grounded by my dad.

8         4.       When we lived with my mother, she drank a lot of alcohol, often in front of us.  
9 She would play loud sad music in the house. She didn't always bathe us. We frequently ate  
10 Ramen noodles and macaroni and cheese, because a lot of times that was all we had in the  
11 house to eat. My mother would buy special foods for herself, like grapes, but then wouldn't  
12 let the kids have any, saying that they were "her food."

13         5.       My mother had a lot of boyfriends who came over and stayed with us.  
14 Sometimes, my mother would lock the children out of the house to be alone or with her  
15 boyfriends. Often, my mother would go out for the night, drinking, leaving us alone.

16         6.       I remember one incident that took place when Justin was in the 2<sup>nd</sup> grade. His  
17 routine every night was to yell down "good night mom." One night, I woke up and found  
18 Justin in his bed, holding onto his bed and his face was bright red. He was screaming "good  
19 night mom" but there was no answer. When I went downstairs, my mother had left us alone  
20 and was gone.

21         7.       There was also a lot of physical abuse, mostly directed towards Jeramy and me.  
22 My mother didn't hit Justin as far as I know, but he was around us when my mother hit  
23 Jeramy and me. My mother frequently hit and physically abused me. I remember her hitting  
24 me many times. When I was younger, I was afraid of my mother. My mother had extreme  
25 shifts in her personality towards us kids, where she was warm and loving at times and then  
26 would tell us kids to get away from her. As I got older, I decided not to move away from the  
27 house and leave Justin alone there, because I was worried that she would start hitting him just  
28 the way she had hit me and Jeramy, especially if no one else was around.

1           8.       We also had many babysitters who were abusive to us. The babysitters would  
2 lock the kids out of the house. One babysitter in particular was mean to Jeramy. She put tape  
3 on his eyebrows and then would rip the tape off. She put a cone on Jeramy's head. Justin and  
4 I had to sit and watch as the babysitter tortured Jeramy. We told my mother, but she didn't  
5 believe us.

6           9.       I remember CPS getting involved only one time. I was in the 5<sup>th</sup> grade. My  
7 mother beat me, grabbed my hair and knocked me down the stairs. I told my teacher and CPS  
8 was called in. Justin and I had to go to a foster home for the night. It was really scary and the  
9 foster family wouldn't let us sleep together. I decided to say that my mother had not really hit  
10 me so that we would not have to continue to remain in foster care. After that, I never told  
11 anyone else about my mom abusing us because I never wanted to go back to that foster family.

12           I certify or declare under penalty of perjury under the laws of the State of Washington  
13 that the foregoing is true and correct.

14   11-11-05 Goldsboro, NC      Kristina Myers  
DATE AND PLACE                      KRISTINA MYERS

Exhibit 21



IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION TWO

IN RE THE PERSONAL RESTRAINT OF  
JUSTIN HEGNEY,  
Petitioner.

CAUSE NO.

CERTIFICATION OF JERAMY HEGNEY

I, Jeremy Hegney, certify and declare as follows:

1. I am Justin Hegney's older brother. I was born on October 1, 1979. I lived with Justin and my sister Kristina when I was growing up and I have personal knowledge of the contents of this certification.

2. In 2000 and 2001, I knew that my brother, Justin, was charged with murder. I was estranged from the family at that time and thus did not follow many aspects of the case very closely. I was never contacted by Justin's lawyer, or by anyone working on his behalf, to talk to me about what my childhood or Justin's childhood was like.

3. My parents divorced when I was very young. Both my mother's and father's households were unpleasant to live in and there was a lot of violence at both places. My father would constantly denigrate my mother, calling her a "slut" and alleging that she had sex with other men during their marriage. He expressed doubt that I was his child, which concerned me until I noticed a family resemblance in a football photo.

4. My father was very angry and would go into rages. One time, after my father

CERTIFICATION OF JERAMY HEGNEY - Page 1

COHEN & IARIA  
National Building, Suite 302  
1008 Western Avenue  
Seattle, Washington 98104  
206-624-9694

RECEIVED

NOV 10 2005

COHEN & IARIA

1 knocked me across the room into a wall, I told a counselor at school about it. When I told my  
2 father that I had reported the abuse, my father punched me in the face, breaking my nose. I  
3 ran out of the house and my dad pulled me inside by my hair and made me clean up my own  
4 blood. I was grounded for three months. The day after my "grounding" was finished, I moved  
5 in with my mother. This incident never was reported to the police or CPS.

6 5. I believe that I bore the brunt of my father's rage. I don't recall seeing him hit  
7 Justin. However, Justin was often present during my conflicts with our father. If he was not  
8 present, he would usually find out about the conflicts.

9 6. My mother was not as violent towards me as my father was. However, my  
10 mother was often not home when she was supposed to be. She frequently went out with  
11 boyfriends and left the children home alone, without telling us. I often had to cook meals and  
12 do things about the house at my mom's because if I didn't do it, it didn't get done.

13 7. I recall some of the babysitters being abusive towards us. When I was 9 years  
14 old, a female babysitter raped me. At the time, I did not think that it was "rape" because I  
15 consented to it, but the experience had a profound effect on me.

16 8. Although I do not think that my mother's drinking was a "problem," she drank  
17 a lot. One time, I went to go get into my mother's bed and she wasn't there. I went outside  
18 and discovered that my mother had left. Another time, when I was ten year old, I heard my  
19 mother and her boyfriend leave the house and I locked her out. She later woke me up with her  
20 bra and panties in her hand, needing to be let in. I can recall times when my mother was  
21 drunk on the couch and making out with a boyfriend while the children were present.

22 9. The conflict in our household led all of the children to fight with each other.  
23 We physically fought each other often.

24 10. The pain and violence in my two households caused me to begin to use drugs.  
25 One time, Justin and I found my mother's second husband, Leroy Campbell's, marijuana and  
26 smoked it together. Justin was eight years old at the time.

1 11. When I was 16 or 17 years old, an incident happened with Leroy Campbell.  
2 Leroy tried to force my head to his crotch area. I told my mother about this and she notified  
3 the police, but no charges were ever filed against Leroy.

4 I certify or declare under penalty of perjury under the laws of the State of Washington  
5 that the foregoing is true and correct.

6 11/7/05 - Home 7806 186<sup>th</sup> St NE  
DATE AND PLACE  
7 Per 211073419 98375

JERAMY HEGNEY

Exhibit 22

1  
2  
3  
4  
5  
6  
7  
8 IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION TWO

9  
10 IN RE THE PERSONAL RESTRAINT OF  
11 JUSTIN HEGNEY,  
12 Petitioner.  
13

CAUSE NO.

CERTIFICATION OF WAYNE FRICKE

14  
15 I, Wayne Fricke, certify and declare as follows:

16 1. I am an attorney licensed to practice law in the State of Washington. I  
17 represented Justin Hegney in Pierce County Superior Court, both in the juvenile proceedings  
18 and in the adult trial. I also represented Mr. Hegney in the direct appeal.

19 2. The murder charges against Mr. Hegney, and the other individuals charged  
20 with the murder of Mr. Toews, attracted a lot of publicity in the print and television media.  
21 Much of this is documented by the filings I made in superior court of all of the media  
22 coverage, as part of my motion to change the venue. The publicity included the publication of  
23 photographs of Mr. Hegney, even though he was only 15 years old at the time of the murder.  
24 The publicity continued up until and during the trial. Although photography of Mr. Hegney's  
25 face inside the courtroom was not allowed, the media was present throughout the trial.

26 3. The trial took place in a "normal" adult courtroom at the Pierce County  
27 Courthouse. No special accommodations were made for the juvenile status of the Mr. Hegney  
28 or his juvenile co-defendant, Mr. Hill. The hours of court were the same as in any adult case.  
There were no special seating arrangements, and for all intents and purposes, the two child

CERTIFICATION OF WAYNE FRICKE - Page 1

COHEN & IARIA  
National Building, Suite 302  
1008 Western Avenue  
Seattle, Washington 98104  
206-624-9694

1 defendants were treated no differently than adults would have been.

2 4. Neither the prosecutor nor the defense attorneys proposed Instruction No. 5. I  
3 believe that the judge came up with this instruction on her own. I did not except to this  
4 instruction, but it was for no tactical reason. I also did not raise a challenge to Instruction No.  
5 5 on direct appeal, again for no tactical reason.

6 5. When Mr. Fox took over representation of Mr. Hegney, I gave him all of my  
7 files from the case – five full boxes. Mr. Fox notified me that a packet of CPS documents  
8 were found in my files that contained documentation of child abuse in the Hegney/Campbell  
9 households. The documents were apparently generated on February 23, 2005, and sent to the  
10 juvenile probation counselor, Tara Varela, who forwarded them to me. I do not know when I  
11 received them nor do I recall why these documents were not obtained earlier, before the judge  
12 issued her decision in the decline hearing.

13 6. I did make a motion to Judge Strombom to reconsider her decline decision,  
14 based upon what I felt to be her shifting of the burden of proof to the defense, as well as other  
15 elements of the Kent<sup>1</sup> standards. However, Judge Strombom ruled that Mr. Hegney's only  
16 remedy was a motion for discretionary review and that she would not entertain a motion for  
17 reconsideration.

18 7. I retained Karil Klingbeil as an expert for the defense on the declination issues.  
19 I supplied Ms. Klingbeil with a lot of materials for her to make an opinion about whether Mr.  
20 Hegney should be declined or retained in the juvenile system. Given her expertise, I counted  
21 on her to interview close family members. I believe she interviewed Kristina Myers, but I did  
22 not know that Ms. Myers was going through withdrawal from drugs and did not know that she  
23 did not tell Ms. Klingbeil accurate information about abuse in the Hegney/Campbell home.  
24 To my knowledge Jeremy Hegney, Justin Hegney's older brother, was not interviewed.

25 8. Had I known of the abuse documented in the CPS files before the declination  
26 hearing or the abuse as related by Jeremy Hegney and Kristina Myers, I would have relayed  
27 this information to Ms. Klingbeil. I also would have introduced this evidence before Judge  
28

<sup>1</sup> Kent v. United States, 383 U.S. 541, 16 L.Ed.2d 84, 86 S. Ct. 1045 (1966).

1 Stromborn in support of my argument that the Kent factors favored retention of Justin in the  
2 juvenile system. For instance, evidence that Justin grew up in two abusive households could  
3 have been used to argue that Justin was not as mature and manipulative as he was made out to  
4 be, and that his family "problems" were deeper than just him wanting to not follow family  
5 rules. I would have argued that the abuse in the Hegney/Campbell households may have been  
6 an explanation for Justin's acting out at school, his drug use, and his association with the other  
7 teenagers involved in the homicide. I also would have been able to argue that the juvenile  
8 system was better equipped to treat children who come from abusive environments than the  
9 adult system.

10 9. Finally, the only mental health evaluations I had performed on Justin were  
11 general i.q. testing and the evaluation by Karil Klingbeil. I did not have any other  
12 psychological testing or evaluations performed on him.

13 I certify or declare under penalty of perjury under the laws of the State of Washington  
14 that the foregoing is true and correct.

15 11/17/05 Tacoma, Wash.  
DATE AND PLACE

Wayne C. Fricke  
WAYNE FRICKE

Exhibit 23



IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION TWO

IN RE THE PERSONAL RESTRAINT OF  
JUSTIN HEGNEY,  
Petitioner.

CAUSE NO.  
CERTIFICATION OF  
KARIL S. KLINGBEIL

I, Karil S. Klingbeil, certify and declare as follows:

1. I was the expert for the defense in Justin Hegney's murder case to attempt to prevent the court from declining his case from juvenile court to adult court. Although I am now retired, I was the Director of Social Work at Harborview Medical Center, an Adjunct Associate Professor at the Department of Psychiatry and Behavioral Sciences at the University of Washington and a Clinical Associate Professor at the UW School of Social Work.

2. I was retained by Mr. Hegney's defense counsel, Wayne Fricke, and reviewed many police reports connected to the case. I also reviewed Justin's school records and interviews with his teachers. I interviewed Justin and his mother, Kathy Campbell. I conducted a phone interview with Justin's sister, Kristina, right before she left for Hawaii. I also interviewed Justin's father, Marshall Hegney. I did not interview Justin's brother, Jeramy, although attempts were made to contact him. In January 2001, I prepared a report to the court, and then testified at the decline hearing.

3. The primary feature of Justin's life that I focused on was the family turbulence

1 caused by the divorce between Marshall Hegney and Kathy Campbell and the fact that Justin  
2 (and his siblings) frequently bounced between the two households as they were growing up. I  
3 also looked at Justin's substance abuse including marijuana and alcohol abuse. Based on what  
4 I knew of Justin's background, I believed (and continue to believe) that declination into the  
5 adult system was not required either to protect society or to address Justin's multiple  
6 problems.

7 4. Because my background is with dealing with interpersonal violence I was  
8 looking carefully at Justin's upbringing and his developmental history to see whether there  
9 was physical or emotional abuse in the two households in which he resided. Although I  
10 suspected that Justin was raised in abusive households, I was never given any data or  
11 information that confirmed my suspicions. Kristina Myers (Justin's older sister) never told  
12 me about any physical or emotional abuse that took place in her mother's home, and I never  
13 received any DSHS/CPS records to review. While I knew that there had been allegations that  
14 there was domestic violence between Marshall Hegney and Kathy Campbell, neither parent  
15 told me that there had been any violence directed against the children.

16 5. In October/November 2005, I reviewed materials provided to me by Justin  
17 Hegney's current lawyer, Neil M. Fox. These materials included DSHS/CPS records  
18 generated on February 23, 2001 (after the decline hearing) and investigation materials,  
19 detailing defense interviews in October 2005 with Jeramy Hegney and Kristina Myers. I also  
20 have reviewed a neuropsychological evaluation, authored by Robert A. Briggs, Ph.D. in  
21 October 2005. In this regard, the only testing that I was aware had been conducted on Mr.  
22 Hegney was some basic intelligence testing, according to Mr. Fricke.

23 6. None of the new information that I reviewed changes my original opinion that  
24 Justin should not have been declined into the adult system. However, the information  
25 provided to me strengthens my opinion and reveals that Justin was raised in a much more  
26 dysfunctional environment than what I originally believed to be the case. The fact that Justin  
27 Hegney did not relay this information to me does not surprise me because he was a child at the  
28 time, was very immature and did not communicate easily. It is my experience that children

1 are often not the most reliable historians about the abuse that took place in their childhood  
2 because they tend to minimize the abuse, and be fearful of telling on the abusive adults.

3 7. What I now know, and what was not relayed to me before, is that there was  
4 considerable physical abuse in the two households in which Justin was raised – physical abuse  
5 by Kathy Campbell, Marshal Hegney, and babysitters directed towards the two older children,  
6 Jeramy and Kristina. While Justin does not appear to have been the target of this physical  
7 abuse, he obviously witnessed it and it could not but have made a lasting impact on him.  
8 Some of the allegations of physical abuse are documented in the CPS records, which I had not  
9 been provided in 2001. In addition to the physical abuse, I am struck by the nature of the  
10 emotional abuse. It now appears that Kathy Campbell consumed considerable amounts of  
11 alcohol on a regular basis, more than what I was led to believe in 2001; that she regularly left  
12 the children alone to pursue her own social life; and that she often withheld adequate food  
13 from them. Additionally, some of the men that she <sup>regularly</sup> dated ~~with~~ were sexually aggressive  
14 towards Jeramy. The children were not able to escape this abuse, because of other abuse and  
15 fighting that took place at Marshall Hegney's house. The one time that Kristina did report the  
16 abuse, the experiences that she and Justin had in foster care were traumatic enough so that  
17 Kristina vowed never to report it ever again.

18 8. Children who grow up in physically and emotionally abusive households often  
19 become depressed and tend to self-medicate with illegal drugs. This seems to be what  
20 occurred in the Hegney/Campbell homes, where all three children developed substance abuse  
21 problems. I do not think that Justin abused drugs because he was overly mature or trying to  
22 act like an adult. I believe that his drug use must be seen as a result of the turbulent homes  
23 <sup>in which he was raised</sup> ~~that he was raised in~~, and the "numbing" response through which he sought to escape his  
24 dysfunctional life.

25 9. Children like Justin have poor self-images and tend to act out, to call attention  
26 to themselves, and often develop behavioral problems in school. Additionally, the evidence  
27 of Justin's childhood explains his poor judgment for associating with the kids he hung out  
28 with in the summer of 2000 and his willingness to participate in illegal activity. The evidence

1 also explains his lack of empathy with Mr. Toews and would explain even his demeanor  
2 during interviews with authority figures after the incident took place.

3 10. Had I known the substantive information about abuse, I would have diagnosed  
4 Justin with suffering from Post-Traumatic Stress Disorder, and would have more aggressively  
5 encouraged his attorney to have comprehensive psychological testing performed.

6 11. In addition to the evidence of abuse is the information from Dr. Briggs that  
7 Justin may have suffered a brain injury that would have impacted his judgment and  
8 functioning, even at mild to moderate levels. Such an injury would also explain Justin's lack  
9 of judgment in 2000, above and beyond what adolescents normally have.

10 12. Had I known all of this information in 2001, when I testified, I would have  
11 been able to stress to the court, more than I did, that Justin was immature, and that he was not  
12 fully culpable for his participation in the robbery and murder of Mr. Toews. Moreover, had I  
13 known more about Justin and the abuse in his homes, he would have been a good candidate  
14 for mental health programs at Echo Glen, where the counselors could have offered an  
15 individually designed program to deal with juveniles who grow up in abusive environments  
16 and who suffer from PTSD.

17 I certify or declare under penalty of perjury under the laws of the State of Washington  
18 that the foregoing is true and correct.

19 November 10, 2005  
DATE AND PLACE

KARIL S. KLINGBEIL

Exhibit 24

1  
2  
3  
4  
5  
6  
7  
8 IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION TWO

9 IN RE THE PERSONAL RESTRAINT OF  
10 JUSTIN HEGNEY,  
11 Petitioner.  
12  
13

} CAUSE NO.

} CERTIFICATION OF NEIL M. FOX  
14

15 I, Neil M. Fox, certify and declare as follows:

16 1. I am an attorney licensed to practice law in the State of Washington. I  
17 represent Justin Hegney.

18 2. I assumed representation of Mr. Hegney in late June 2005. On June 28, 2005, I  
19 picked up five boxes of files regarding Mr. Hegney's case from the offices of Mr. Hegney's  
20 prior attorney, Wayne Fricke. Over the course of the next few months, I reviewed those files.  
21 In Box No. 3, there were a series of papers related to the decline hearing. These papers  
22 included many of Mr. Hegney's school records. Mixed in with these papers was a packet of  
23 DSHS records (copies of which can be found in Exhibit 19) setting out documentation of  
24 abuse allegations in Mr. Hegney's home. The cover letter on the papers, a letter addressed to  
25 Tara Varela, is dated February 23, 2001. There was a small yellow "sticky" on the cover  
26 letter, containing the handwritten note "Wayne - FYI TCV."

27 3. Attached to this certification is a chart containing the names, birthdates and  
28 dispositions of all of the children present at the scene of the homicide in this case. I compiled  
this list from court records, news accounts and other sources.

1           4.     I have also made true copies of various documents connected to this case.  
2 These documents are either copies of documents contained in the superior court files (Ex.  
3 1,2,4,5,6, 7, 8, 9, 10, 11, 12), copies of original documents found in Mr. Fricke's files (Ex. 3,  
4 13, 14, 15, 16, 17, 18, 19, or copies of certifications received from various witnesses (Ex. 20,  
5 21, 22, 23, 25). Ex. 26 is a true copy of a document given to my client, Mr. Hegney, by the  
6 Washington State Department of Corrections regarding earned early release.

7           5.     After talking with Mr. Fricke, I drafted a certification for him to sign regarding  
8 this case. He made various corrections and I sent him the final version. He signed it and  
9 faxed a copy back to me, and had the original delivered by courier. As I was preparing the  
10 final version of the PRP, I noticed I had made a typographical error on page 2, line 9, of Mr.  
11 Fricke's certification – the CPS records were apparently generated on February 23, 2001, not  
12 2005. I have not been able to reach Mr. Fricke to get his approval to change the date to 2001,  
13 even though that is clearly the appropriate date.

14           I certify or declare under penalty of perjury under the laws of the State of Washington  
15 that the foregoing is true and correct.

16           11/17/01 Seattle  
DATE AND PLACE

NEIL M. FOX

### Other Co-Defendants

Name	DOB	Disposition
Hegney, Justin	6/5/85	Declined as juvenile, tried and convicted as adult for Murder 1 20 years
Beaver, Jermaine	3/26/85	Pled to consp. to commit Murder 2 as juvenile – m.i. to 21
Hernandez, Manuel	10/18/87	Juvenile trial for Murder 1, MI to 21
Hernandez, Robert	4/4/84	AutoDecline, pled to Murder1, 26 years, 8 mos.
Hill, Jesse	10/30/85	Declined as juvenile, tried and convicted as adult for Murder 1, 24 years 3 mos (includes sentence for robbery count)
Hunt, Terrance	9/7/80	Charged as adult, pled guilty to Murder 1, 26 years, 8 mos.
Neely, Charles	9/29/88	Tried as juvenile, found guilty of Murder 1, m.i. to 21
Oyenini, Kashif	9/19/86	Not charged
Spencer, Jamar	1/8/88	Pled guilty as juvenile to murder 1, range 180 weeks to age 21
Thompson, Elisha	5/22/86	Never charged



Exhibit 25

## **REPORT OF NEUROPSYCHOLOGICAL EVALUATION**

Name: Justin M. Hegney  
Date of Birth: June 5, 1985  
Education: High school degree  
Date(s) of Examination: October 12, 2005

### **Reason for Referral:**

Mr. Hegney was referred for neuropsychological evaluation by his attorney, Neil Fox, Esq. This evaluation is being requested to determine Mr. Hegney's current intellectual and cognitive abilities, and to form an opinion regarding his abilities at the time of the event that led to his current incarceration.

### **Current Complaints and Pertinent History:**

Records received in the process of creating this report:

Court of Appeals Decision, 4/22/04, State of Washington, Division Two  
Oral Decision on Decline Hearing, 2/20/01, State of Washington Superior Court (Pierce County)  
Declination Report, 2/12/01, Tara Varela (Probation Officer)  
Forensic psychosocial summary, 1/17/01, Karil S. Klingbeil MSW, ACSW  
Intelligence testing, 12/4/00, Mark B. Whitehill, Ph.D.

Mr. Hegney met with me on the morning of the evaluation, prior to testing. We completed the Neuropsychological History Questionnaire (please see attached). He told me that he understood the purpose of this evaluation was to get information for attorney and to see how he was doing.

Mr. Hegney is not taking any medication at the present time. He ate his regular breakfast this morning in advance of testing. His sleep was usual and he told me that he felt rested. Mr. Hegney was taking Doxepin, 100 mg qd, for anxiety, depression, and to help him not hear voices that he heard, but told me that he discontinued taking the medication in March 2005. Upon exploration, Mr. Hegney told me that he heard a voice for about 30 days when he was in county jail, and he took the medication for it. The voices stopped, and then he stopped taking the meds. He hasn't heard any voices since.

### **Tests Administered:**

Halstead-Reitan Neuropsychological Test Battery (HRB) including:

Halstead Neuropsychological Test Battery for Adults

Trail Making Test (Parts A and B)

Reitan-Klove Lateral Dominance Examination

Reitan-Indiana Aphasia Screening Examination

Reitan-Klove Sensory-Perceptual Examination

Memory Assessment Scales (MAS)

Wechsler Adult Intelligence Scale (WAIS)

Wide Range Achievement Test – 3<sup>rd</sup> Edition (WRAT-3)

Personality Assessment Inventory (PAI)

Test of Memory Malingering (TOMM)

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**Attitude of this patient toward Testing:**

Testing time: 0915-1445

Break time: 1300-1315

**Attitude toward testing (e.g., rapport, work habits, interest, motivation, reaction to success/failure)**

Mr. Hegney appeared motivated to do the testing. He asked for clarification of instructions when needed and seemed to put forth his best effort. He showed minor frustration during difficult tasks and at times would laugh when presented with something he had difficulty answering or completing.

**Attention**

Mr. Hegney's gaze remained focused on the task at hand. He continued to work on each subtest until it was completed or the examiner asked him to stop.

**Visual/Auditory/Motor Problems**

Mr. Hegney did not show evidence of any visual, auditory, or motor problems.

**Language (receptive/expressive)**

Mr. Hegney did not appear to have any difficulty with receptive or expressive language. He understood what was asked of him and was able to express his answers appropriately.

**Physical Appearance**

Mr. Hegney was of average height and weight and was dressed in prison-issued scrubs and white tennis shoes.

**Affect**

Mr. Hegney was amiable throughout the testing.

**Unusual Behaviors/Thought Processes**

None noted.

The test results are considered a valid representation of his current neuropsychological functioning. No evidence of malingering was noted (please see notes below regarding the TOMM)

**Intellectual Abilities:**

The WAIS was given because of its known neuropsychological properties, despite its dated norms. These results should be used for neuropsychological interpretation only.

On the WAIS, this patient earned Verbal, Performance, and Full Scale IQ scores which fell into the average range. There was no significant difference found between his verbal and perceptual-motor abilities.

In terms of his verbal intellectual abilities, there was a mild amount of variability. Justin scored in the average range on all subtests: measures of knowledge of general information, verbal concept formation, understanding words and their meanings, attention and concentration to orally presented digits, and understanding social mores, and mental arithmetic.

There was somewhat more variability found for this patient's perceptual-motor abilities. He scored in the average range on tasks of recognizing visual detail, visual-spatial manipulations, problem solving, understanding part-whole relationships and temporal sequencing of social stimuli. Justin scored in the above average range on a complex task of perceptual-motor learning and motor persistence.

Given his educational level and pattern of performance on the WAIS subtests, the current results do not suggest any significant intellectual loss.

**Academic Abilities:**

On the WRAT-3, this patient achieved the following estimated grade equivalents. Reading –high school, Spelling - 8<sup>th</sup> grade, and Arithmetic – 6<sup>th</sup> grade. His performances are equivalent to standard scores of 97, 90, and 84, respectively. These results do not indicate any significant loss of basic academic skills. Justin noted that he was a “B-C” student during the latter part of his high school career, but had some difficulty in algebra. [In May, 2000 ((9<sup>th</sup> grade) Justin was expelled from school for drug possession and was failing all of his courses].

**General Neuropsychological Functioning:**

On tests that are more sensitive to the biological integrity of the brain, this patient earned Halstead Impairment Index of 0.6. This indicates that 60% of the component tests were within the brain-damaged range. A value of this magnitude represents mildly impaired neuropsychological function. On the General Neuropsychological Deficit Scale, this patient earned a score of 33. This score indicates an overall clinical level within the mildly impaired range (26-40) of neuropsychological functioning. Mr. Hegney displayed a variable pattern of neuropsychological results in which he demonstrated some definite impairment as well as some very good and intact functions.

Mr. Hegney demonstrated significant impairment of attention and concentration to quickly presented auditory material. He demonstrated mildly impaired abstract reasoning and logical analysis, complex psychomotor problem solving, and incidental learning of complex material. Conversely, he performed within normal limits on flexibility of thought for simple and complex stimuli, incidental learning of simple material, and attention and concentration to slowly presented auditory material. Overall, the results suggest mildly impaired generalized neuropsychological function.

**Specific Neuropsychological Functioning:**

Concerning tests specific to the neuropsychological functions of each cerebral hemisphere, this patient demonstrated a unilateral pattern of cognitive dysfunction. Right hemisphere dysfunction was demonstrated by mildly impaired recognition of names-faces, which did not improve upon delayed recall. There was evidence of mild constructional dyspraxia.

List acquisition, immediate and delayed recall of a list of words, and recollection of a story, in both immediate and delayed formats, within normal limits. Justin's short-term memory was shown to be at the 42<sup>nd</sup> percentile, verbal memory (40<sup>th</sup>), visual memory (68<sup>th</sup> percentile), with overall (global) memory at the 55<sup>th</sup> percentile.

**Sensorimotor Functioning:**

Examination of this patient's sensorimotor function indicated deficits, bilaterally. Regarding the right side of his body, Mr. Hegney demonstrated slower performance on the complex psychomotor problem-solving task with his right hand than would be expected, given his left hand performance. His grip strength was weaker with his right hand than would be expected, given his left hand performance. He demonstrated a right-sided visual imperception on bilateral simultaneous stimulation. Mr. Hegney was slower on the tactile form recognition exam with his right side, compared to his left. Regarding the left side of his body, his finger-tapping speed was slower with his left hand than would be expected, in comparison with his right. He also demonstrated more errors with his left hand on the finger-tip number writing test. There was evidence of constructional dyspraxia. Other sensory findings were within normal limits.

**Emotional Status:***Validity of Test Results*

The PAI provides a number of validity indices that are designed to provide an assessment of factors that could distort the results of testing. Such factors could include failure to complete test items properly, carelessness, reading difficulties, confusion, exaggeration, malingering, or defensiveness. For this protocol, the number of uncompleted items is within acceptable limits.

Also evaluated is the extent to which the patient attended appropriately and responded consistently to the content of test items. The patient's scores on these scales suggest that he did attend to item content in responding to PAI items; however, there may have been some idiosyncratic responses to particular items that could affect test results.

The degree to which response styles may have affected or distorted the report of symptomatology on the inventory is also assessed. Certain of these indicators fall outside of the normal range. Mr. Hegney's response patterns are unusual in that they indicate defensiveness about particular personal shortcomings as well as an exaggeration of certain problems.

With respect to positive impression management, the client's pattern of responses suggests that he tends to portray himself as being relatively free of common shortcomings to which most individuals will admit, and he appears somewhat reluctant to recognize minor faults in himself. Although there is no evidence to suggest an effort to intentionally distort the profile, the results may under represent the extent and degree of any significant findings in certain areas due his tendency to avoid negative or unpleasant aspects of himself.

Despite the level of defensiveness noted above, there are some areas where the client described problems of greater intensity than is typical of defensive respondents. These areas could indicate problems that merit further inquiry. These areas include: impact of traumatic events; rumination and worry; distrust; drug abuse or dependence; unhappiness; moodiness; poor sense of identity; failures in close relationships; alcohol abuse or dependence; poor control over anger; poor interpersonal rapport; physical signs of depression; history of antisocial behavior; suspiciousness; physical signs of anxiety; and irrational fears.

With respect to negative impression management, there are subtle suggestions that the client attempted to portray himself in a negative or pathological manner in particular areas. Although this pattern does not necessarily indicate a level of impression management that would render the test results uninterpretable, the clinical scale elevations may over represent the extent and degree of significant test findings in certain areas.

#### *Clinical Features*

The PAI clinical profile is marked by significant elevations across a number of different scales, indicating a broad range of clinical features and increasing the possibility of multiple diagnoses. The configuration of the clinical scales self-reported by Mr. Hegney suggests a person with a history of substance abuse problems who is embittered, suspicious, and angry. His sensitivity and hostility in social interactions probably serves as a formidable obstacle to the development of close relationships, and thus he is likely to be withdrawn and isolated. The patient likely ruminates about his life circumstances, and the urge for drugs may be at the center of many of these ruminations. It is likely that there is significant impairment in social role performance that has resulted from his substance abuse; however, the patient is more likely to attribute such problems to external factors than to admit its relation to his drug use.

The patient indicates that his use of drugs has been sufficient to have had negative consequences on his life. Problems associated with drug use appear to be noteworthy, including strained interpersonal relationships, vocational and/or legal problems, and possible medical complications. According to the patient, his last (street) drug use was the day of his arrest.

The patient's self-description indicates significant suspiciousness and hostility in his relations with others. He is likely to be a hyper vigilant individual who often questions and doubts the motives of those around him. Although he may not describe himself as unduly suspicious, others are likely to view him as very sensitive and easily insulted in his interactions. As a result, working relationships with others are likely to be strained and may require an unusual degree of support and assistance in order to succeed. Given the nature of his living conditions, this is expected and not completely unrealistic. The patient reports that his use of alcohol has had a negative impact on his life.

The patient indicates that he occasionally experiences, or may experience to a mild degree, maladaptive behavior patterns aimed at controlling anxiety. The patient has likely experienced a disturbing traumatic event in the past-an event that continues to distress him and produce recurrent episodes of anxiety.

The patient reports some difficulties consistent with relatively mild or transient depressive symptomatology.

It appears that the patient has a history of involvement in intense and volatile relationships. In these relationships, he tends to be preoccupied with fears of being abandoned or rejected by those people important to him.

The patient's report suggests that he is likely to be worried and concerned about some current issues to the degree that his ability to concentrate and attend are significantly compromised. Acquaintances are likely to comment about his over concern regarding issues and events over which he has no control.

According to the patient's self-report, he describes NO significant problems in the following areas: unusual thoughts or peculiar experiences; problems with empathy; unusually elevated mood or heightened activity; difficulties with health or physical functioning.

#### *Self-Concept*

The self-concept of the patient appears to involve a rather negative self-evaluation. He is likely to be self-critical, not handling setbacks very well and blaming himself for past failures and lost opportunities. He may inwardly be more troubled by self-doubt and misgivings about his adequacy than is apparent on the surface. He may tend to play down his successes as a result and probably sees such accomplishments as heavily depending on the efforts or good will of others.

#### *Interpersonal and Social Environment*

The patient's interpersonal style seems best characterized as somewhat distant in personal relationships. He does not appear to place a high premium on close, lasting relationships and views most social interactions without much enthusiasm. Others may view him as reserved and possibly aloof and unsympathetic. However, he is likely to value his independence and be less concerned than most people about the opinions of others.

In considering the social environment of the patient with respect to perceived stressors and the availability of social supports with which to deal with these stressors, his responses indicate that both his recent level of stress and his perceived level of social support are about average in comparison to normal adults.

#### *Treatment Considerations*

Treatment considerations involve issues that can be important elements in case management and treatment planning. Interpretation is provided for three general areas relevant to treatment: 1) behaviors that may serve as potential treatment complications, 2) motivation for treatment, and 3) aspects of the patient's clinical picture that may complicate treatment efforts.

With respect to anger management, the patient describes his temper as within the normal range, and as fairly well-controlled without apparent difficulty.

With respect to suicidal ideation, the patient is not reporting distress from thoughts of self-harm.

The patient's interest in and motivation for treatment is somewhat below average in comparison to adults who are not being seen in a therapeutic setting. Furthermore, his level of treatment motivation is substantially lower than is typical of individuals being seen in treatment settings. His responses suggest that he is satisfied with himself as he is, that he is not experiencing marked distress, and that, as a result, he sees little need for changes in his behavior. However, the patient does report a number of strengths that augur well for a relatively smooth treatment process if he made a commitment to treatment.

If treatment were to be considered for this individual, particular areas of attention or concern in the early stages of treatment could include:

- He may be somewhat defensive and reluctant to discuss personal problems, and as such he may be at-risk for early termination.
- He may have initial difficulty in placing trust in a treating professional as part of his more general problems in close relationships.

#### *DSM-IV Diagnostic Possibilities*

Listed below are *DSM-IV* diagnostic possibilities suggested by the configuration of PAI scale scores. The following are advanced as hypotheses; all available sources of information should be considered prior to establishing final diagnoses.

#### Axis I Diagnostic Considerations:

304.90	Other (or Unknown) Substance Dependence (Psychoactive substance dependence)
303.90	Alcohol Dependence
300.4	Dysthymic Disorder

Axis II:      799.9      Diagnosis Deferred on Axis II

The Test of Memory Malingering is also given. This instrument is designed to provide evidence that can help to confirm or disconfirm the validity of an examinee's effort. Mr. Hegney was given Trials 1, 2 and Retention Trial. Out of 50 items administered on each Trial, Mr. Hegney achieved scores of 44, 50, and 50, respectively. The author of the test notes that a score below 45 raises concern that the patient is not putting forth maximum effort, with declining scores indicating the increased probability of malingering. Performance on Trial 2 is flawless (50 out of 50) and a score of 45 or above is indicative of non-malingerers regardless of neurological dysfunction.

#### **Diagnostic Impressions and Neurological Implications:**

Examination of this patient's neuropsychological functioning indicates mild impairment of general and moderate impairment of specific neuropsychological abilities. In addition, the results show bilateral sensorimotor deficits. These results would be consistent with neurocognitive deficits resulting from recovering cranio-cerebral trauma; however there is no indication by the patient that he has had a head injury. He has been in "his share" of fights, but he told me that since he has moved from prison to prison, that he tries to keep a low profile, not become angry, and just serve his time. The level (mild) of impairment of general cognitive abilities at this testing is measurable. It is suspected that a closed head injury was suffered, although the timing of this event is not clear. It is thought to have occurred after some basic academic and intellectual abilities have been learned, i.e., did not occur prior to admission to formal education.

#### **Implications and Recommendations for Adaptive Function:**

However, it is noted that he will probably not experience significant problems with daily function and adaptive abilities. He will likely not demonstrate significant difficulty in problem solving and

reasoning. His abilities for processing information, attention and concentration (to quickly presented information), formulating appropriate action, and integrating feedback are seen to be mildly impaired. Conversely, his memory and attention and concentration to slowly-presented auditory material is within normal limits. His ability to multitask is slightly impaired. Sensorimotor deficits are noticeable clinically, but might not be noticed in everyday life, other than his sense of touch might not be as acute as it once was. Grip strength is somewhat weak, bilaterally. Mr. Hegney's native intelligence is within normal limits, both verbally and in perceptual-motor skills.

It will be very important that Justin not use any unsupervised drug. The effects of over the counter as well as prescribed medication are likely to be intensified given the vulnerability of his brain. This of course applies to any alcoholic beverage or other drugs.

It will be important that Justin keep things prioritized and in order when there are multiple tasks to perform, and that is a strategy that would benefit any worker

It would be prudent for Mr. Hegney to brush up on spelling and arithmetic. This can be done in a variety of ways, from basic texts adult basic education classes that might be available to him in the prison system.

While it is apparent from some of Mr. Hegney's responses that he is satisfied with himself, it is important that he be able to accept that he is a good candidate for structured cognitive-behavioral therapy. If his frustration level increases, he would be a good candidate to consider learning stress management skills.

Finally, I would not recommend retesting this patient from a neuropsychological point of view unless there is a significant negative change in abilities.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

  
Robert A. Briggs, Ph.D.

**Neuropsychology Consulting Services  
Clinical Neuropsychology  
6360 East Thomas Road, Suite 100  
Scottsdale, Arizona 85251**



ROBERT A. BRIGGS

Excellent health  
Married  
6'6"; 270 pounds  
Born July 31, 1949

Director of Outpatient Services. Was responsible for conducting individual, couple, and family psychotherapy. Conducted group therapy with substance abuse population. Performed neuropsychological and psychological assessments. Also supervised up to three certified substance abuse counselors in their clinical duties. Assisted the Director of the agency in administrative decisions relative to outpatient service delivery. Presentations were also made to

current and prospective employee assistance program organizations on regular basis.

April 1984 - August 1986

Tri-County Mental Health Center

Community outpatient psychologist responsible for psychotherapy and associated assessment of individuals, couples, and families. Children and adults were seen, evaluated, and treated. Minimum of 26 hours per week patient contact. Individual and group treatment modalities used in addition to marital treatment. Also responsible for neuropsychological evaluations, multidisciplinary in-service presentations and emergency room on-call rotations. Received post-doctoral supervision in neuropsychological assessment and clinical psychological interventions from licensed psychologists.

October 1982 - January 1986

Salva, Wenger & Associates

Conducted workshops, seminars, group and individual psychotherapy in a private practice setting. Groups typically consisted of 4-7 patients conducted weekly. Community workshops and seminars were organized and presented on selected topics.

September 1982 - August 1983

Psychology Internship  
Kansas City V.A. Medical Center

Pre-doctoral internship requirements were fulfilled in this APA-approved site. The internship was divided into three rotations of four months. Predominant in the internship was training and education in neuropsychological assessment with other rotations including alcohol dependency treatment units, ambulatory care units, inpatient and outpatient psychiatry, transition living unit, and consultation to the Medical Center on requested topics. The internship required weekly supervision with licensed psychologist. Duties performed were standard neuropsychological evaluations, individual and group psychotherapy, and psychological evaluations, participation in team treatment planning, biofeedback training and pain management skills, provision to supervision to masters' level psychology interns, and consultation and training of multidisciplinary staff as well as patients' families.

January 1982 - September 1982

Kansas City V.A. Medical Center

Worked as a volunteer with chronic psychiatric inpatient population in transition from hospitalization to community living. Developed and implemented programs that afforded patients opportunities for learning and practicing life skills in a structured setting. Was supervised by a licensed psychologist.

September 1980 - May 1981

Saint Peter's Elementary School

Performed as consultant to school staff for assessment of children. Provided testing, feedback, and recommendations to school personnel and families. Assessments included intelligence, aptitude, and ability evaluations.

May 1978 - August 1982

Gale Grossman, Incorporated

Developed and organized inventory control in addition to assisting in the supervision of office management. Work experience was invaluable in gaining knowledge about business transactions, obtaining additional contact with the public, and earning money toward continuing education.

November 1970 - May 1978

Division of Family Services  
State of Missouri

Started as caseworker with responsibility for family and individual counseling. Promoted to supervisory level with primary responsibility for instructing caseworkers in my unit and overseeing quality of counseling activity. Received promotion to supervisor at regional level in charge of supervisory staff and additional quality assurance duties. Developed training materials for staff and acted as a consultant for the Kansas City community for counseling services and other client-centered activities. Was appointed to state committees to assist in the organization and development of statewide policy and procedures.

**WORKSHOPS/ SEMINARS/ PRACTICUM EXPERIENCES**

July 11-13, 2005

Neuropsychological Patterns in Neurological  
Disorders

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing neuropsychological patterns of test results seen in various neurological disorders and conditions. Conditions illustrated included autoimmune and toxic/metabolic disorders. **APA-approved for 16 CEUs.**

June 2-4, 2005

Neuropsychological Patterns in Neurological  
Disorders

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing neuropsychological patterns of test results seen in various neurological disorders and conditions. Conditions illustrated included closed head injury, cerebrovascular disorders, intrinsic and extrinsic cerebral tumors, and vascular and other dementias, including Alzheimer's disease. **APA-approved for 16 CEUs.**

April 22, 2005

Argosy University/Phoenix

Participation in workshop: "Updates for Arizona Psychologists Providing Supervision: Ethics, Law and Diversity." The round-table format included discussion of multicultural competence and diversity in a changing world, ethical practice and the AZ Board of Psychologist Examiners, expectations and evaluation of graduate students, AZ child abuse reporting and Maricopa County multidisciplinary protocol, and updates of some AZ laws affecting the practice of psychology. **APA-approved for 6.0 CEUs**

January 14-16, 2005

Coalition of Clinical Practitioners  
in Neuropsychology

Participation in neuropsychologists-led workshops that presented information regarding: (1) practice standards, managed care issues and identification of a neuropsychologists, 2) detecting indicators of brain impairment among clients who are initially very able and among clients who are initially of limited ability, and 3) integrating child/adolescent Halstead-Reitan Battery results with treatment planning. **APA-approved for 6.0 CEUs.**

October 1-3, 2004

Advanced Master's Series Workshop

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing neuropsychological perspectives in these realms: learning disabilities, forensic Neuropsychology and differential diagnosis, pathognomonic signs of brain disease/damage, the role of conation in neuropsychological assessment, transformation of tests scored according to age and education norms, correlation between intelligence and neuropsychological

tests, and progressive test administration as a method of justification of comprehensive neuropsychological testing. **APA-approved for 21 CEUs.**

August 16-18, 2004

Neuropsychological Patterns in Neurological Disorders

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing neuropsychological patterns of test results seen in various neurological disorders and conditions. Conditions illustrated included head injury, cerebrovascular disorder, cerebral tumor, dementia (including SD-AT), and toxic/metabolic disorders. **APA-approved for 16 CEUs.**

June 18-20, 2004

Reitan Society Postgraduate Seminar

The focus of this three-day interactive seminar: Advantages of the Halstead-Reitan Neuropsychological Test Battery in clinical and forensic cases. Only practitioners experienced in the administration, scoring, and interpretation of the complete Halstead-Reitan Neuropsychology Test Battery were eligible for attendance. Topics included use of valid vs. invalidated neuropsychology batteries, Daubert standards of testimony and methods, and use in criminal homicide cases. **APA-approved for 12 CEUs.**

May 14, 2004

Argosy University/Phoenix

Participation in workshop: "Ethical and Legal Updates for Arizona Psychologist Providing Supervision." The round-table format included discussion of the revision of the APA ethics code, resources and rules for ethical supervision, a supervision model, and supervision with awareness of multicultural issues. **APA-approved for 6.5 CEUs**

October 18-19, 2003

Coalition of Clinical Practitioners in Neuropsychology

Participation in workshops that presented information regarding (1) current issues within private practice in the HIPAA era, 2) Forensic issues in neuropsychological fitness for duty evaluations 3) Mock trial of neuropsychological testimony, and 4) Pattern analysis of Halstead-Reitan Test Results: Going beyond norms. **APA-approved for 9.5 CEUs.**

October 15-18, 2003

National Academy of Neuropsychology Annual Meeting

Participated in workshops in the following discussion sessions: 1) The APA Ethics Code (2002) and the Forensic Neuropsychologist Practical Updates from the Front Lines, 2) Understanding and Surviving the Daubert Challenge in Your Testimony, 3) Maintaining and Expanding Reimbursement Opportunities in Clinical Neuropsychology. 4) Neuropsychology of Drug Use 5) Ethics: Selected Areas of Practice - Pediatrics, Emerging Technologies, and Other Areas, 6) Forensic Neuropsychology: Answering the Forensic Questions, and 7) Ethical Issues in Neuropsychology: When Ethics and Practice Collide **APA-approved for 18 CEUs.**

June 6-7, 2003

Reitan Society Postgraduate Seminar Significant Clinical Issues

The focus of this two-day interactive seminar: Neuropsychological aspects of aging and Neuropsychological Correlates of Traumatic Brain Injury using the Halstead Reitan Battery. Only practitioners experienced in the administration,

scoring, and interpretation of the complete Halstead-Reitan Neuropsychology Test Battery were eligible for attendance. **APA-approved for 13 CEUs.**

April 24-26, 2003

Neuropsychological Patterns in Neurological Disorders

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing neuropsychological patterns of test results seen in various neurological disorders and conditions. Conditions illustrated included head injury, cerebrovascular disorder, cerebral tumor, dementia (including SD-AT), and toxic/metabolic disorders. **APA-approved for 16 CEUs.**

April 5, 2003

The Practical Approach to the HIPAA Privacy Rule

One-half day offered to health care providers in updated practical applications of HIPAA regulations. Interactive/didactic format presented by two psychologists and an attorney. **APA-approved for 3.5 CEUs.**

March 28, 2003

Mental Health and the Law

One-day interactive seminar offered to health care providers in updated legal and guidelines in the State of Arizona. Case presentations with discussion regarding application of statutes were presented. HIPAA regulations, responding to subpoenas and law enforcement personnel, the rights of minors and parents, and treatment issues with respect to competency issues were discussed in a question and answer format. **APA-approved for 6 CEUs**

October 12, 2002

Coalition of Clinical Practitioners  
in Neuropsychology

Attended workshops that presented information regarding (1) forensic presentation from a clinical neuropsychology perspective and making testimony more helpful in that arena 2) strategies for outpatient rehabilitation following brain injury, and 3) business practices in clinical neuropsychology for the private practitioner. **APA-approved for 8 CEUs.**

October 10-11, 2002

National Academy of Neuropsychology  
Annual Meeting

Attended workshops that involved participation in the following discussion sessions: 1) ethics in neuropsychological practice in a variety of presenting questions, 2) neuropsych rehabilitation and effective interventions, and 3) adult grand rounds. **APA-approved for 3 CEUs.**

June 27-29, 2002

Advanced Interpretation of Child Clinical Cases

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing interpretation of difficult and complex neurological cases using the Halstead-Reitan Neuropsychological Test Battery for Older Children and the Reitan-Indiana Neuropsychological Test Battery for Young Children. Cases were presented by the attendees and stressed evaluation skills, integration of clinical history and neurological findings, differential diagnosis, and determination of educational, treatment or rehabilitation needs for patient population of five through 14 years of age. **APA-approved for 16 CEUs.**

June 15-16, 2002

Reitan Society Postgraduate Seminar  
Significant Clinical Issues

The focus of this two-day seminar was to methodically increase referral sources for neuropsychological practice, examine the real-life implications of neuropsychological testing and how recommendations can be made to reflect day to day improvements, and the discussion of how to emphasize the nature of the biology of the brain in the practice of neuropsych and its recommendations for the individual. Only practitioners experienced in the administration, scoring, and interpretation of the complete Halstead-Reitan Neuropsychology Test Battery were eligible for attendance. **APA-approved for 12 CEUs.**

November 4, 2001

Coalition of Clinical Practitioners  
in Neuropsychology

Attended workshops that presented information regarding (1) current issues in clinical neuropsychology, 2) mild head injury and its intellectual, cognitive, and emotional consequences, 3) business practices in clinical neuropsychology for the private practitioner and (4) practice updates in the practice of forensic neuropsychology. **APA-approved for 8 CEUs.**

November 2-3, 2001

National Academy of Neuropsychology  
Annual Meeting

Attended workshops that involved participation in the following discussion sessions: adult grand rounds, pediatric grand rounds, pharmacological treatments for dementia, and ethical issues in clinical neuropsychology. **APA-approved for 6 CEUs.**

September 6-8, 2001

Legal Applications of the HRB

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing consultation, testing, interpretation, and case preparation in legal situations using the Halstead-Reitan Neuropsychological Test Battery for Adults. Common and unusual issues in clinical neuropsychological practice including depositions and trial work were discussed. **APA-approved for 16 CEUs.**

July 14-15, 2001

Reitan Society Postgraduate Seminar  
Scientific Approach to Neuropsychological  
Assessment Batteries

The focus of this two-day seminar is to methodically evaluate the scientific bases of neuropsychological test batteries that are currently used. Fixed batteries and the less reliable. Less valid flexible battery approaches were examined. Only practitioners experienced in the administration, scoring, and interpretation of the complete Halstead-Reitan Neuropsychology Test Battery were eligible for attendance. **APA-approved for 12 CEUs.**

May 31, 2001

Rehab Without Walls

Participated in workshop offered to health care providers in the assessment and delivery of services to home-based patients. The program: Inter-relationships for Cognitive, Behavioral, and Emotional Sequelae of Acquired Brain Injury. Credit: 2 classroom hours.

May 11, 2001

AZ Legal and Ethical Issues

One day interactive seminar offered to health care providers in updated legal and ethical guidelines in the State of Arizona. Case presentations with

discussion regarding application of statutes were presented. **APA-approved for 6 CEUs**

April 4, 2001

Rehab Without Walls

Participated in workshop offered to health care providers in the assessment and delivery of services to home-based patients. The program is geared toward evaluation and treatment of basic brain injury. Credit: 2 classroom hours.

October 25, 2000

Rehab Without Walls

Participated in full-day workshop offered to health care providers in the assessment and delivery of services to home-based patients. The program is geared toward evaluation, treatment decision based on objective data directed toward increased functional abilities of patient.

August 23-25, 2000

2000 Training Mental Health Experts in  
Legal Competency and Restoration

Two-and-one-half days invitation-only workshop sponsored by the Arizona Supreme Court and presented by psychologist, judges, and associated professionals in order to educate and present information on the evaluation of juvenile and adult defendants in areas of competency and restoration to competency. A.R.S. Rule 11 evaluations were discussed and reviewed. 16 hours of training was received.

July 27-29, 2000

Advanced Interpretation of Child Clinical  
Cases

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing interpretation of difficult and complex neurological cases using the Halstead-Reitan Neuropsychological Test Battery for Older Children and the Reitan-Indiana Neuropsychological Test Battery for Young Children. Cases were presented by the attendees and stressed evaluation skills, integration of clinical history and neurological findings, differential diagnosis, and determination of educational, treatment or rehabilitation needs for patient population of five through 14 years of age. **APA-approved for 16 CEUs.**

June 2-4, 2000

Reitan Society Postgraduate Seminar  
Neurological Patterns of Medical Disorders

The focus of this two-day seminar is to enhance skills of experienced clinicians regarding neuropsychological characteristics of individuals with medical disorders. Only practitioners experienced in the administration, scoring, and interpretation of the complete Halstead-Reitan Neuropsychology Test Battery were eligible for attendance. The seminar followed the format of grand rounds case conferencing. **APA-approved for 12 CEUs.**

March 31-April 1, 2000

Legal and Ethical Risks and Risk Management in  
Professional Psychological Practice  
Sequence I: General Risk Management Strategies  
Sequence II: Risk Management in Specific High Risk Areas

Two-day workshop encompassing description and discussion of factors that create complaints against practitioners. Informed consent, confidentiality and exceptions, requests of information from the legal system, record keeping, and potential vicarious liabilities were discussed. Sponsored by the AZ Psychological Association and The American Psychological Association Insurance Trust. **APA-approved for 12 CEUs.** (six units each workshop)

November 19, 1999

Healing ADD from the Inside Out

One-day workshop presented to psychologists and physicians as well as other providers of services to children who suffer from Attention Deficit Disorders and the subtypes identified through clinical and nuclear imaging by Daniel Amen, M.D. Strategies for identification as well as pharmacological intervention with clinical intervention was discussed. **APA-approved for 7 CEUs.**

April 15-17, 1999

Neuropsychological Patterns in Neurological Disorders

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing neuropsychological patterns of test results seen in various neurological disorders and conditions. Conditions illustrated included head injury, cerebrovascular disorder, cerebral tumor, dementia and Alzheimer's disease, and toxic/metabolic disorders. **APA-approved for 16 CEUs.**

September 17-19, 1998

Legal Applications of the HRB

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing consultation, testing, interpretation, and case preparation in legal situations using the Halstead-Reitan Neuropsychological Test Battery for Adults. Common and unusual issues in clinical neuropsychological practice including depositions and trial work were discussed. **APA-approved for 16 CEUs.**

June 11-13, 1998

Advanced Interpretation of Child Clinical Cases

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing interpretation of difficult and complex neurological cases using the Halstead-Reitan Neuropsychological Test Battery for Older Children and the Reitan-Indiana Neuropsychological Test Battery for Young Children. Cases were presented by the attendees and stressed evaluation skills, integration of clinical history and neurological findings, differential diagnosis, and determination of educational, treatment or rehabilitation needs for patient population of five through 14 years of age. **APA-approved for 16 CEUs.**

March 6-8, 1998

National Assn. of Criminal Defense Lawyers

Three-day workshop discussing the necessary information from expert witnesses for the trier of fact in death penalty cases. Mitigation strategies and use of psychological data was included in the presentation. 22.8 CEUs.

June 19-21, 1997

Puzzling Cases: Advanced Interpretation Seminar

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing difficult and/or puzzling cases presented by peers and faculty using the Halstead-Reitan Neuropsychological Test Battery. **APA-approved for 16 CEUs.**

April 17-19, 1997

Legal Applications of the HRB

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing consultation, testing, interpretation, and case preparation in legal situations using the Halstead-Reitan Neuropsychological Test Battery for Adults. Common and usual issues in clinical neuropsychological practice including depositions and trial work were discussed. **APA-approved for 16 CEUs.**

October 17-19, 1996

Advanced Interpretation of Child Clinical Cases

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing interpretation of difficult and complex neurological cases using



the Halstead-Reitan Neuropsychological Test Battery for Older Children and the Reitan-Indiana Neuropsychological Test Battery for Young Children. Cases were presented by the attendees and stressed evaluation skills, integration of clinical history and neurological findings, differential diagnosis, and determination of educational, treatment or rehabilitation needs for patient population of five through 14 years of age. **APA-approved for 17 CEUs.**

April 18-20, 1996

Advanced Interpretation Adult Clinical Cases

Three-day workshop presented to neuropsychologists by neuropsychologists emphasizing interpretation of difficult and complex neurological cases using the Halstead-Reitan Neuropsychological Test Battery for Adults. Cases were presented by the attendees and stressed evaluation skills, integration of clinical history and neurological findings, differential diagnosis, and determination of educational, treatment or rehabilitation needs for patient population of 15 and older. **APA-approved for 17 CEUs.**

April 10-12, 1996

Defense and Evaluation of Brain Damage Claims

Three-day seminar presented to attorneys, insurance representatives, and neuropsychologists regarding the use of competent testimony and how to undermine the practice of incompetent providers of neuropsychological services.

November 2-5, 1995

National Academy of Neuropsychology  
Annual Meeting

Attended three-day workshop that involved participation in the following discussion sessions: syndrome specific assessment of head injury sequelae, and differentiating psychiatric from neurologic conditions. **APA-approved for 6 CEUs.**

August 6, 1995

Advanced Workshop in Clinical Neuropsychology

One-day workshop presenting recent research in the areas of clinical assessment of malingering and discussion of the validity of age and education norms in the brain-damaged patient population. Principal presenter: Ralph Reitan, Ph.D. with Deborah Wolfson, Ph.D. **APA approved for 6 CEUs.**

June 21, 1995

Annual Neuro Update-Research Medical Center

One day workshop consisting of didactic presentations on current information on brain tumors, Parkinson's disease, and the use of the Gamma Knife in the obliteration of specific neoplasms, AVMs, and other bodies in the brain. **Approved for 6.1 hours of CEUs.**

May 25-27, 1995

Cognitive and Behavioral Techniques and  
Relationship Issues in the Treatment of Brain-Injured Adults

Two and one-half day seminar consisting of didactic and experiential teaching methods regarding patient deficits in learning and routine living as a result of head injury and remediation of these deficits. **APA-approved for 16.5 CEUs.**

March 16, 1995

Memory: A Seminar for Health Care Professionals

One-day seminar reviewing the neuroanatomical storage structure of memory and strategies on how to understand and improve its retention. Emphasis was placed on learning disabilities, depression, amnesia, and Alzheimer's disease. **APA-approved for 6 CEUs.**

November 10-11, 1994

Defense and Evaluation of Psychological  
and Neuropsychological Injury Claims

Two-day seminar presented to attorneys, insurance representatives, and neuropsychologists regarding the use of competent testimony and how to undermine the practice of incompetent providers of neuropsychological and psychological services.

July 15-17, 1994

Advanced Workshop in Clinical Neuropsychology

Participated in a three-day workshop presented by Drs. Ralph Reitan and Deborah Wolfson on Advanced Issues in Clinical Neuropsychology: Interpretation, Research, and Litigation. Participated in small groups and didactic lectures. **APA-approved for 21 CEUs.**

October 28-30, 1993

National Academy of Neuropsychology  
Annual Meeting

Attended three-day workshop that involved participation in the following discussion sessions: neglected issues in forensic neuropsychology; cognitive changes associated with dementia, neurobehavioral aspects of non-Alzheimer patients, issues in interpretation of difficult cases using the Halstead-Reitan batteries, and advances in the detection of malingering on neuropsychological tests. **APA-approved for 12 CEUs.**

April 1-3, 1993

West Coast Neuropsychology Conference

Attended three-day workshop that involved participation in the assessment and management of neuropsychological issues in children. Evaluations, interpretation, report writing and recommendations were presented. **APA-approved for 14.5 CEUs.**

November 5-7, 1992

National Academy of Neuropsychology  
Annual Meeting

Attended three-day workshop that involved participation in the following discussion sessions: corrections for Halstead-Reitan Norms (1991), frontal lobe impairments, malingering, estimation of premorbid IQ, psychotherapy in rehabilitation, and memory disorders. **APA-approved for 12 CEUs.**

September 4-6, 1992

Workshop on Eating Disorders

Attended three-day workshop entitled Eating Disorders: A Practical Clinical Update that involved participation and didactics on recent clinical updated information. **APA-approved for 20 CEUs.**

February 14-17, 1992

Seminar on Clinical Issues

Attended four-day workshop entitled "Identifying and Managing Consequences of Sexual Abuse" that involved participation in discussion of clinical issues for therapists. **APA-approved for 18 CEUs.**

October 31,  
November 1-2, 1991

National Academy of Neuropsychology  
Annual Meeting

Attended three-day workshop that involved participation in the following discussion sessions: assessment of frontal lobe functioning, neuroimaging and neuropsychological assessment, clinical memory assessment, grand rounds, and driving advisement and neuropsychology. **APA-approved for 12 CEUs.**

July 19-21, 1991

Trauma and Dissociation Workshop

Participated in three-day workshop that focused on multiple personality disorder and post-traumatic stress disorder. The process of depersonalization and splitting from reality was a key issue. **APA-approved for 21 CEUs.**

March 22-25, 1991

Association for Advanced Training

Participated in four-day workshop geared toward continuing education and update of most recent research and education in the field of psychology. This workshop was done in preparation for licensure in additional state. **APA-approved for 40 CEUs.**

November 1-3, 1990

National Academy of Neuropsychology  
Annual Meeting

Attended three-day workshop that involved participation in the following discussion sessions: computerized test interpretation, MMPI-II interpretation, assessment of malingering, ecological validity of neuropsychological assessment, and the forensic aspects of traumatic brain injury. **APA-approved for 12 CEUs.**

August 10-14, 1990

American Psychological Association  
Annual Meeting

Attended five-day workshop that included a variety of topic discussions and participant-led conversations including assessment and treatment of borderline personality disorder, major and minor head trauma and impact on family, forensic work as a neuropsychologist, rational emotive therapy, marriage and family therapy issues and techniques, substance abuse assessment and treatment, and general issues regarding private practice development. **APA-approved 12 CEUs.**

August 6-7, 1990

Expert Witness Seminar

Two-day workshop presented by Ralph Reitan, Ph.D. and associates covering the forensic skills needed to testify as expert witness on neuropsychological evaluation. **APA-approved for 16 CEUs.**

April 2-3, 1990

Rehabilitation Institute of Chicago

Two-day workshop entitled "Psychological, social, and family consequences of traumatic brain injury." Involved in learning advanced principles of cognition, behavior, and new techniques in the treatment of brain-injured patients. **APA-approved for 13 CEUs.**

November 2-4, 1989

National Academy of Neuropsychology  
Annual Meeting

Participated in workshops in assessment of mild traumatic brain injury (adults and children); decision-making in the assessment of brain injury; current

imaging techniques in neuropsychology; assessment of functional abilities of the head injured patient; and selected topics in forensic neuropsychology.  
**Approved for 12 CEUs.**

July 29, 1989

Rational Emotive Therapy  
Refresher Seminar

One-day meeting with Albert Ellis, Ph.D., for practitioners versed in Rational Emotive Therapy, in order to sharpen skills and discuss individual implementation of the approach.

June 9-11, 1989

University of Minnesota  
Continuing Education Seminar

Participated in three full-day meetings regarding assessment and rehabilitation of major and minor head trauma in children.

September 3-4, 1988

Violence Prediction: An Advanced Tutorial

A licensed psychologist presented this two-day workshop in order to assist in dangerousness prediction of patients. This information included prediction from the perspective of the practitioner, the common errors made in dangerousness prediction, the violence prediction decision tree, forensic distortion analysis, historical influences, triggering stimuli, and opportunity variables, graphing violence acceleration, and writing high impact dangerousness prediction reports.

October 28-30, 1987

National Academy of Neuropsychology  
Annual Meeting

Participated in full-day workshop on neuropsychological implications and assessment of substance abuse patients; half-day seminars included forensic neuropsychology and its contribution to legal community; contribution of neuropsychology to the assessment of medical disease; consulting practice to the community; and the Brain Electrical Activity Mapping (BEAM) technique.

October 27-29, 1986

National Academy of Neuropsychology  
Annual Meeting

Participated in full-day workshop on assessment and rehabilitation of major and minor head trauma; half-day seminars included forensic neuropsychology, and developing treatment plans for head-injury victims.

July 16-18, 1986

Advanced Workshop in Child Neuropsychology  
and Learning Disabilities

Participation in three full-day workshops involving advanced methods of assessing brain dysfunction and rehabilitation strategies for children. Principal presenter: Ralph Reitan, Ph.D.

June 18-20, 1986

Clinical Applications of Neuropsychology

Participation in three full-day workshops involving assessment and rehabilitation techniques for patients with documented minimal neurological deficits but who demonstrate significant neuropsychological findings. Populations included aging patients, medically complicated patients, and forensic cases. Principal presenter: Ralph Reitan, Ph.D.

May 9-11, 1986

Advanced Workshop in Head Injury  
and Rehabilitation

Participation in three full-day workshops involving assessment and rehabilitation strategies for patients with head injuries from a variety of sources. Extensive case review and techniques were presented. Principal presenter: Ralph Reitan, Ph.D.

May 2-4, 1986

Basic Training Workshop  
Human Neuropsychology

Participation in three full-day workshops involving the fundamental training in administration and interpretation of all Halstead- Reitan Test Batteries (including the Reitan-Indiana Test Battery for Young Children). Organization, methodological principles, and scoring considerations were discussed with extensive review of cases. Principal presenter: Ralph Reitan, Ph.D.

March 10-12, 1986

Developmental Disabilities VIII

Two-day workshop held at Johns Hopkins University School of Medicine centered on neurological and behavioral aspects of disabled children and adults with emphasis on treatment.

March 7, 1986

Problem-Centered Therapy Workshop

This eight-hour workshop focused on an integrative approach to psychotherapy utilizing existing treatment modalities in an eclectic and novel synthesis.

November 9, 1985

Professional Malpractice Workshop

This eight-hour workshop was presented by an attorney to examine elements of mental health malpractice and its avoidance.

October 24, 1985

Mental Wellness Conference

This eight-hour conference was sponsored by Tri-County Mental Health Center in seminar format to discuss with community leaders and pastoral officials the concern of mental health maintenance in community settings.

August 24, 1985

Neuropsychological Diagnosis Workshop  
American Psychological Association  
Annual Meeting

Full-day workshop focused on childhood problems that could be approached and treated via neuropsychological assessment and diagnosis. Treatment recommendations were stressed.

July 18, 1985

Borderline Personality Diagnosis Seminar

Eight-hour seminar on the assessment, evaluation, and treatment of this particular psychiatric diagnosis in adults and adolescents.

June 13, 1985

Psychiatric Emergency Seminar

This four-hour seminar was presented with focus on acute medical and psychological treatment for emergency intervention. Management approaches to psychiatric emergencies and treatment strategies were discussed.

June 6, 1985

Learning Disabilities Workshop

This six-hour workshop focused on learning disabilities in children, the treatment and rehabilitation of same, and current modalities of rehabilitation.

March 30 - April 3, 1985

Current Topics Workshop

This 50-hour intensive workshop was centered on current topics in psychology and related area of specialty in preparation for the national licensure examination.

February 27, 1985

Cocaine and Alcohol Workshop

This eight-hour workshop was presented by David Smith, M.D., as a means of information for the diagnosis and treatment of patients with these specific addictions.

February 14, 1985

Endocrine Seminar

This eight-hour seminar was presented for the purpose of assisting in diagnosis and treatment of patients suffering with hormonal and glandular dysfunction.

February 1-4, 1985

Hypnosis Workshop

Four-day workshop sponsored by Associate Trainers in Clinical Hypnosis on basic through advanced skills in a variety of treatment situations.

October 1, 1984

Seminar on Antipsychotics

Continuing education program covering the clinical use of anti-psychotic medication and the most efficacious schedules and administration of specific compounds.

August 27, 1984

Rational Emotive Therapy Seminar  
American Psychological Association  
Annual meeting

Full-day seminar on theory and practice of cognitive strategies in psychotherapeutic settings. Albert Ellis, Ph.D., and Robert Harper, Ph.D., moderators.

August 26, 1984

Progressive Relaxation Seminar

Full-day seminar on advanced methods of progressive relaxation for use in a variety of therapeutic settings. American Psychological Association. Annual meeting.

May 24-25, 1984

Cognitive Therapy Workshop

Two-day workshop to enhance clinical skills in basic and advanced applications of cognitive therapy through experiential and didactic exercises.

January 1983 - April 1984

Neuropsychology Practica

A practicum setting supervised by staff neuropsychologist to provide education and training in basic neuroanatomy, use of the Halstead-Reitan Neuropsychology Test Battery, and diagnosis and treatment of head injury.

June 3, 1983

Behavioral Management of the  
Head Trauma Patient

Workshop conducted by a neuropsychologist in practical techniques of behavioral management and rehabilitation strategies for the head trauma patient. Emphasis was placed on interdisciplinary team/family treatment of the patient in hospital, home, rehabilitation, and vocational settings.

September 1982 - August 1983

Kansas City V.A. Medical Center

Weekly clinical seminars conducted by licensed psychologists to discuss treatment modalities, current developments in the profession, and current articles in relevant journals.

June 1982 - August 1982

Advanced Practicum Supervision  
University of Missouri

Practicum consisted of supervising four master's level students. Duties included assessment of trainee's therapeutic skills, progress, caseload management skills, and treatment recommendations.

### **RESEARCH ACTIVITY**

September 1987 -

Neuropsychology Consulting Services

Project involving a correlative study of demography, psychological, and physiological assessments and their relationships to neuropsychological findings.

September 1983 - April 1985

Kansas City V.A. Medical Center

Project was accepted by the Veterans Administration Hospital to examine variables that correlated with post-traumatic stress disorder diagnosis in Vietnam combat veterans and in an alcoholic population. The examination was performed with the use of both previously designed instruments and instruments that were devised specifically for this project.

### **WORKSHOP PRESENTATIONS**

November 11, 2004

Guest Lecturer

Argosy University, Arizona School of Professional Psychology. Two three-hour presentations to graduate level psychology classes in the importance of selecting the most appropriate assessment tools in neuropsychological evaluation. Discussion of the Halstead-Reitan Neuropsychology Battery.

April 28, 2004

Best Practices in Brain Injury  
Rehabilitation Counseling

Three hour in-service was presented to traumatic brain injury specialists in the AZ Department of Economic Security's Rehabilitation Services Administration personnel. Topics included appropriateness of referral questions for a neuropsychological evaluation, determination of best effort, and pattern analysis.

June 6, 2003

Gentiva - Rehab Without Walls  
Rehabilitation Rounds

One-hour presentation to multidisciplinary staff of rehabilitation program on the subject of how to recognize and respond chemical dependency in rehab patients. Methods of approach to maximize treatment efficacy were discussed.

August 8, 2000

Concentra Managed Care Services

Presented a ninety-minute session composed of lecture and question-and-answers from a panel of managers responsible for patient assessment, evaluation, and referral to community-based health care providers.

January 10, 1997

Missouri Society of CPAs

Two-hour presentation to 12 hourly and salaried workers. Didactic and audience participation styles were used to identify, clarify, and demonstrate stress-producing behaviors. Stress reduction measures were taught to the participants for use in both personal and professional situations. Cognitive-behavioral therapy principles were taught in the workshop.

October 16, 1994

Reed Oven Company

One and one-half hour presentation to 51 hourly and salaried workers. Didactic and audience participation styles were used to identify, clarify, and demonstrate stress-producing behaviors. Stress reduction measures were taught to the participants for use in both personal and professional situations.

July 24, 1994

Reed Oven Company

One and one-half hour presentation to 45 hourly and salaried workers. Didactic and audience participation styles were used to identify, clarify, and demonstrate assertive communications skills and their development in both personal and professional situations.

February 23, 1994

Federal Reserve Bank

Presented two one-hour sessions to hourly and salaried employees on subject of assertive communication skill development. Didactic lecture, discussion of individual case scenarios, and suggestions for homework assignments were given. Approximately 90 people attended the presentations.

June 7, 1993

Thomas J. Lipton Tea Company

Two-and-one-half hour presentation on stress management to a group of approximately 45 first-tier and mid-range supervisors. Didactics and experiential exercises were used that involved identification of stress styles, reduction of stress, and assertive communication instruction.

January 15, 1993

O'Halloran, Wilson & Key  
Certified Public Accountants

Two-hour presentation on time and stress management in an office setting to certified public accountancy firm. Didactic lectures and experiential exercises were methods of instruction used.

May 29, 1992

Federal Reserve Bank

Presented two 1 1/4 hour sessions to hourly and salaried employees of prospective EAP client company in which the topic of stress management was presented. Didactic lectures, discussion of individual case histories, and suggestions for individual stress reduction were given in this workshop. Approximately 54 employees attended the presentation.



December 21, 1990

O'Halloran, Wilson & Key  
Certified Public Accountants

Two-hour presentation on time and stress management in an office setting to certified public accountancy firm. Didactic lectures and experiential exercises were methods of instruction used.

December 13, 1990

Mobay Chemical Company

Presented 1 3/4 hour session to hourly and salaried employees of EAP client company in which the topic of assertive communication style was presented. Didactic lectures, role-playing, and discussion were used in this workshop. Approximately 25 employees attended the presentation.

November 13, 1990

Mobay Chemical Company

Presented 1 3/4 hour session to hourly and salaried employees of EAP client company in which the topic of stress management was presented. Didactic lectures, discussion of individual case histories, and suggestions for individual stress reduction were given in this workshop. Approximately 25 employees attended the presentation.

March 6, 1990

Mental Health Association of Johnson County

Presented two-hour session composed of didactic lecture and experiential exercises in which the topic of assertive communication was discussed. Approximately 30 attendees from the Kansas City Depressive/Manic Depressive Support Group.

February 16, 1990

Missouri Association of Trial Attorneys  
Annual meeting

Presented "Identifying brain injury in the soft tissue case" in program entitled "Soft Tissue Diagnostics and Evaluation." Other faculty members were plaintiff and defense counsel and physicians. Discussed salient points of neuropsychological evaluation and how such information could be invaluable in forensic arena.

December 14, 1989

Mobay Chemical Company

Presented two 1 3/4 hour sessions to hourly and salaried employees of EAP client company in which the topic of assertive communication style was presented. Didactic lectures, role-playing, and discussion were used in this workshop. An average of 15-18 employees attended each presentation.

November 16, 1989

Mobay Chemical Company

Presented two 1 3/4 hour sessions to hourly and salaried employees of EAP client company in which the topic of stress management was presented. Didactic lectures, discussion of individual case histories, and suggestions for individual stress reduction were given in this workshop. An average of 15-18 employees attended each presentation.

September 29, 1989

Magazine, Lerner & Company  
Certified Public Accountants

Two-hour presentation on assertive communication in an office setting to certified public accountancy firm. Didactic lectures and experiential exercises were methods of instruction used.

April 6, 1989

Mental Health Association of Johnson County

Presented two-hour session composed of didactic lecture and Experiential exercises in which the topic of assertive communication was discussed. Approximately 45 attendees from the Kansas City Depressive/Manic Depressive Support Group.

October 1, 1988-  
September 30, 1989

Kansas City Veterans Administration  
Medical Center

Was appointed as psychology consultant for the purpose of presenting lectures to interns. Presentations were didactic and included the practice of cognitive therapy as well as the practice of neuropsychological evaluation in a private practice setting.  
December 2, 1988

Magazine, Lerner & Company  
Certified Public Accountants

Two-hour presentation to certified public accountancy firm on stress management techniques and implementation of it on daily basis. Didactic lecture and role-plays were methods utilized.

August 18, July 21  
and May 19, 1988

Mobay Chemical Company

Presentation to hourly and salaried employees of EAP client company in which the topic of assertive communication style was presented. Didactic lectures, role-playing, and discussion were the methods used in this workshop. An average of 15-18 employees attended each presentation.

July 21, June 16, and  
May 19, 1988; November 11, 1987

Mobay Chemical Company

Presentation to hourly and salaried employees of EAP client company in which the topic of stress management was presented. Didactic lectures, discussion of individual case histories, and suggestions for individual stress reduction were given in this workshop. An average of 15-18 employees attended each presentation.

September 11, 1987

Reed Oven Company

Presentation to 45 hourly and salaried workers of prospective EAP contract in which the topics of chemical abuse and psychological outpatient treatment were discussed.

June 19, 1987

Kansas Head Injury Association  
Seminar

Presentation to 75 physicians, attorneys, and family members in seminar entitled "Traumatic Head Injury: Cause, Consequence, and Challenges to the Legal Community." Scope of material presented involved specific aspects of brain damage and head injury as well as what could be expected as a consequence of head trauma.

July 14, 1986

Western Missouri Mental Health Center  
In-service

Presented advanced techniques in neuropsychological assessment to psychology interns in a roundtable format. Presented case studies and discussed methods of arriving at accurate diagnosis and rehabilitation strategies.

Personal injury attorney group

November 15, 1985

Tri-County Mental Health Center  
In-service

September 11, 1984

Tri-County Mental Health Center  
Advisory Council

July 12 - July 19, 1984

Tri-County Mental Health Center  
In-service

1982 - 1983

Kansas City V.A. Medical Center  
Training in Individual and Group  
Effectiveness Resources

1982 - 1983

Kansas City V.A. Medical Center  
Advanced Supervisory Training

December 5, 1983

Saint Mary's Hospital

September 1982 - December 1982

Saint James Church

## PUBLICATIONS

Briggs, Robert A. "Combat level and family support: Correlates of post-Vietnam adjustment." Doctoral dissertation. April 1983.

### LICENSURE

Licensed as a Psychologist, State of Arizona. 1998 (# 3262)  
Licensed as a Psychologist and Certified as a Health Service Provider, State of Missouri. 1985 and 1993, respectively. (# PY01164)

### MEDICAL CENTER AFFILIATIONS

Active staff, Phoenix Rehabilitation Hospital, 2004

### ACADEMIC APPOINTMENTS

Clinical Adjunct Training Faculty, Argosy University (Arizona School of Professional Psychology). Approved as a Practicum training site for students. 1999.

### ORGANIZATIONS

Member, National Academy of Neuropsychologists  
Member, American Psychological Association (APA)  
Member, APA Division 40 (Clinical Neuropsychology)  
Member, Coalition of Clinical Practitioners in Neuropsychology (Charter Member)  
Member, Arizona Psychological Association  
Member, Missouri Psychological Association  
Member, Brain Injury Association, State of Arizona  
Member, National Register of Health Service Providers in Psychology (pending)

### HONORS

Appointed member of nominating committee. Coalition of Clinical Practitioners in Neuropsychologists, 2002.

Elected member-at-large of executive committee. Greater Kansas City Psychological Association. 1990, 1991.

Elected treasurer of Greater Kansas City Psychological Association. 1988, 1989.

Cited for merit as chairperson of committee working toward APA-accreditation of the University of Missouri-Kansas City counseling psychology program. 1981-82.

Cited for merit for work accomplished on volunteer basis for Concerned Care, Inc., in individual and group treatment settings with mentally retarded and developmentally disabled adults, children and their families. 1980-81.

Cited for merit by the State of Missouri for work performed in committees as regional supervisor. 1978.

### HOBBIES

Scuba diving and other participatory sports, playing piano, photography, and collecting original art, especially pottery.

### REFERENCES

Full references will be furnished upon request.

Exhibit 26

T150440-37

WASHINGTON DEPARTMENT OF CORRECTIONS  
EARNED EARLY RELEASE CREDITS

PAGE 1

DATE: 11 03 05 NAME: HENNEY, JUSTIN M.  
LOCATION: FLORENCE CORR CTR-AZDOC NO: 837611  
COUNSELOR: AZA2GOOD CONDUCT TIME

ON THIS SENTENCE FROM PIERCE COUNTY, 011011504 WITH A MINIMUM TERM OF 20 YEARS, 0 MONTHS, 0 DAYS, YOU HAD THE POTENTIAL TO EARN 0 DAYS OF GOOD CONDUCT TIME (GCT). FROM THE TIME START ON THIS CAUSE, 02/28/02 TO THE START OF THIS REPORTING PERIOD YOU HAVE LOST 0.00 DAYS OF GCT.

IN THIS PERIOD, 04/01/04 TO 11/01/05, YOU HAVE LOST OR WILL BE RECOMMENDED TO LOSE 0.00 DAYS OF GCT AS A RESULT OF INFRACTIONS.

THE AMOUNT OF GCT LOST MAY EXCEED THE AVAILABLE GCT FOR THIS PERIOD AND WILL BE SUBTRACTED FROM FUTURE TIME PERIODS. IF GCT DENIED AS A RESULT OF AN INFRACTION EXCEEDS AVAILABLE GCT ON THIS CAUSE, ONLY THE PORTION OF THE INFRACTION THAT CAN BE ADDRESSED ON THIS CAUSE WILL BE SHOWN ON THIS REPORT; HOWEVER, THE TOTAL AMOUNT OF THE SANCTION MAY BE REFLECTED ON OTHER CONCURRENT OR CONSECUTIVE CAUSES. IN NO EVENT WILL THE TOTAL AMOUNT OF THE INFRACTION SANCTION BE EXCEEDED.

INFRACTION CODE	DESCRIPTION	DATE	DAYS DENIED	THIS CAUSE
NONE				

YOU HAVE THE ABILITY TO EARN THE REMAINING 0.00 DAYS OF GOOD CONDUCT TIME ON THIS SENTENCE PROVIDED YOU RECEIVE NO INFRACTIONS RESULTING IN LOSS OF GOOD CONDUCT TIME CONSISTENT WITH PRESUMPTIVE SANCTION POLICY, AND WASHINGTON ADMINISTRATIVE CODE.

EARNED TIME

YOU HAVE A POTENTIAL TO EARN 0 DAYS EARNED TIME WHILE SERVING ON THIS SENTENCE. UP TO THE START DATE OF THIS REPORT, 04/01/04 YOU HAD EARNED 0.00 DAYS EARNED TIME AND NOT EARNED 0.00 DAYS OF EARNED TIME. IN THIS PERIOD 04/01/04 TO 11/01/05, YOU HAVE EARNED 0.00 DAYS EARNED TIME AND NOT EARNED 0.00 DAYS EARNED TIME.

YOU HAVE THE ABILITY TO EARN THE REMAINING 0.00 DAYS EARNED TIME CREDITS CONSISTENT WITH EARNED RELEASE POLICY AND MANDATORY SENTENCE REQUIREMENTS.

IF YOU ARE CURRENTLY SERVING ON MORE THAN ONE SENTENCE, THE AMOUNT OF EARNED TIME CREDITS WILL BE APPLIED PROPORTIONATELY DEPENDENT UPON THE AMOUNT OF TIME SERVED ON EACH INDIVIDUAL CAUSE DURING THIS PERIOD.

IF YOU ARE SERVING AN INDETERMINATE SENTENCE (OFFENSE OCCURRED PRIOR TO JULY 1, 1984) THE INDETERMINATE SENTENCE REVIEW BOARD MAY, AT THEIR OWN DISCRETION, THROUGH A DISCIPLINARY HEARING, DENY EARNED TIME CREDITS CERTIFIED BY THE DEPARTMENT OF CORRECTIONS.

I HAVE RECEIVED A COPY OF THE ABOVE INFORMATION AND UNDERSTAND ITS CONTENT.

INMATE SIGNATUREDATE

Exhibit 27

H-1751.1

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HOUSE BILL 1924

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Ballasiotes, Sheahan, Dickerson, Radcliff, Sheldon, Chopp, Mason, Conway, Costa, Mitchell, K. Schmidt, Buck, Wensman, Schoesler, Parlette, Hankins, Backlund, Johnson, D. Schmidt, Sterk, Sump, Cooke, Mastin, Scott, O'Brien, Cooper, Hatfield, Blalock, Kessler, Mulliken, Cole, Kenney, Gardner, McMorris and Tokuda

Read first time 02/14/97. Referred to Committee on Criminal Justice & Corrections.

AN ACT Relating to sex offenses; reenacting and amending RCW 9.94A.320 and 9.94A.120; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 9.94A.320 and 1996 c 302 s 6, 1996 c 205 s 3, and 1996 c 36 s 2 are each reenacted and amended to read as follows:

## TABLE 2

## CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV	Aggravated Murder 1 (RCW 10.95.020)
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XIII	Murder 2 (RCW 9A.32.050)
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) {+ Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) +}
XI	{{{- Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) -}}} {+ Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) +}
X	Kidnapping 1 (RCW 9A.40.020) {{{- Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) -}}} Child Molestation 1 (RCW 9A.44.083) Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a)) {+ Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) +}
IX	Assault of a Child 2 (RCW 9A.36.130) Robbery 1 (RCW 9A.56.200) Manslaughter 1 (RCW 9A.32.060) Explosive devices prohibited (RCW 70.74.180) {{{- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) -}}} Endangering life and property by explosives with threat to human being (RCW 70.74.270) Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406) Controlled Substance Homicide (RCW 69.50.415)



- Sexual Exploitation (RCW 9.68A.040)
  - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
  - Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII
- Arson 1 (RCW 9A.48.020)
  - Promoting Prostitution 1 (RCW 9A.88.070)
  - Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
  - Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
  - Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
  - Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine (RCW 69.50.440)
  - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII
- Burglary 1 (RCW 9A.52.020)
  - Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
  - Introducing Contraband 1 (RCW 9A.76.140)
  - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
  - Child Molestation 2 (RCW 9A.44.086)
  - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
  - Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
  - Involving a minor in drug dealing (RCW 69.50.401(f))
  - Reckless Endangerment 1 (RCW 9A.36.045)
  - Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- VI
- Bribery (RCW 9A.68.010)
  - Manslaughter 2 (RCW 9A.32.070)
  - Rape of a Child 3 (RCW 9A.44.079)
  - Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
  - Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
  - Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
  - Incest 1 (RCW 9A.64.020(1))
  - Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
  - Intimidating a Judge (RCW 9A.72.160)
  - Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
  - Theft of a Firearm (RCW 9A.56.300)
- V
- Persistent prison misbehavior (RCW 9.94.070)
  - Criminal Mistreatment 1 (RCW 9A.42.020)
  - Abandonment of dependent person 1 (RCW 9A.42.060)
  - Rape 3 (RCW 9A.44.060)
  - Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
  - Child Molestation 3 (RCW 9A.44.089)

Kidnapping 2 (RCW 9A.40.030)  
 Extortion 1 (RCW 9A.56.120)  
 Incest 2 (RCW 9A.64.020(2))  
 Perjury 1 (RCW 9A.72.020)  
 Extortionate Extension of Credit (RCW 9A.82.020)  
 Advancing money or property for extortionate extension of credit (RCW 9A.82.030)  
 Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)  
 Rendering Criminal Assistance 1 (RCW 9A.76.070)  
 Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))  
 Sexually Violating Human Remains (RCW 9A.44.105)  
 Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))  
 Possession of a Stolen Firearm (RCW 9A.56.310)

IV

Residential Burglary (RCW 9A.52.025)  
 Theft of Livestock 1 (RCW 9A.56.080)  
 Robbery 2 (RCW 9A.56.210)  
 Assault 2 (RCW 9A.36.021)  
 Escape 1 (RCW 9A.76.110)  
 Arson 2 (RCW 9A.48.030)  
 Commercial Bribery (RCW 9A.68.060)  
 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)  
 Malicious Harassment (RCW 9A.36.080)  
 Threats to Bomb (RCW 9.61.160)  
 Willful Failure to Return from Furlough (RCW 72.66.060)  
 Hit and Run -- Injury Accident (RCW 46.52.020(4))  
 Hit and Run with Vessel -- Injury Accident (RCW 88.12.155(3))  
 Vehicular Assault (RCW 46.61.522)  
 Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana or methamphetamines) (RCW 69.50.401(a)(1)(iii) through (v))  
 Influencing Outcome of Sporting Event (RCW 9A.82.070)  
 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))  
 Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))

III

Criminal Mistreatment 2 (RCW 9A.42.030)  
 Abandonment of dependent person 2 (RCW 9A.42.070)  
 Extortion 2 (RCW 9A.56.130)  
 Unlawful Imprisonment (RCW 9A.40.040)  
 Assault 3 (RCW 9A.36.031)  
 Assault of a Child 3 (RCW 9A.36.140)  
 Custodial Assault (RCW 9A.36.100)  
 Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))  
 Harassment (RCW 9A.46.020)  
 Promoting Prostitution 2 (RCW 9A.88.080)  
 Willful Failure to Return from Work Release (RCW 72.65.070)  
 Burglary 2 (RCW 9A.52.030)  
 Introducing Contraband 2 (RCW 9A.76.150)  
 Communication with a Minor for Immoral Purposes (RCW 9.68A.090)  
 Patronizing a Juvenile Prostitute (RCW 9.68A.100)  
 Escape 2 (RCW 9A.76.120)

- Perjury 2 (RCW 9A.72.030)
  - Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
  - Intimidating a Public Servant (RCW 9A.76.180)
  - Tampering with a Witness (RCW 9A.72.120)
  - Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
  - Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
  - Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
  - Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
  - Theft of livestock 2 (RCW 9A.56.080)
  - Securities Act violation (RCW 21.20.400)
- II
- Unlawful Practice of Law (RCW 2.48.180)
  - Malicious Mischief 1 (RCW 9A.48.070)
  - Possession of Stolen Property 1 (RCW 9A.56.150)
  - Theft 1 (RCW 9A.56.030)
  - Trafficking in Insurance Claims (RCW 48.30A.015)
  - Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
  - Health Care False Claims (RCW 48.80.030)
  - Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
  - Possession of phencyclidine (PCP) (RCW 69.50.401(d))
  - Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
  - Computer Trespass 1 (RCW 9A.52.110)
  - Escape from Community Custody (RCW 72.09.310)
- I
- Theft 2 (RCW 9A.56.040)
  - Possession of Stolen Property 2 (RCW 9A.56.160)
  - Forgery (RCW 9A.60.020)
  - Taking Motor Vehicle Without Permission (RCW 9A.56.070)
  - Vehicle Prowl 1 (RCW 9A.52.095)
  - Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
  - Malicious Mischief 2 (RCW 9A.48.080)
  - Reckless Burning 1 (RCW 9A.48.040)
  - Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
  - Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
  - False Verification for Welfare (RCW 74.08.055)
  - Forged Prescription (RCW 69.41.020)
  - Forged Prescription for a Controlled Substance (RCW 69.50.403)
  - Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine) (RCW 69.50.401(d))

Sec. 2. RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), (6), and (8)

of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or a felony that is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes, and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no prior convictions for a felony in this state, another state, or the United States; and

(iii) The offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance.

(b) If the midpoint of the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from

the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections. If the midpoint of the standard range is twenty-four months or less, no more than three months of the sentence may be served in a work release status. The court shall also impose one year of concurrent community custody and community supervision that must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. The court may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

- (i) Devote time to a specific employment or training;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;
- (iii) Report as directed to a community corrections officer;
- (iv) Pay all court-ordered legal financial obligations;
- (v) Perform community service work;
- (vi) Stay out of areas designated by the sentencing judge.

(c) If the offender violates any of the sentence conditions in (b) of this subsection, the department shall impose sanctions administratively, with notice to the prosecuting attorney and the sentencing court. Upon motion of the court or the prosecuting attorney, a violation hearing shall be held by the court. If the court finds that conditions have been willfully violated, the court may impose confinement consisting of up to the remaining one-half of the midpoint of the standard range. All total confinement served during the period of community custody shall be credited to the offender, regardless of whether the total confinement is served as a result of the original sentence, as a result of a sanction imposed by the department, or as a result of a violation found by the court. The term of community supervision shall be tolled by any period of time served in total confinement as a result of a violation found by the court.

(d) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

(7) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(8)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A

proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than (({- eight -})) {+ eleven +} years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department of corrections under subsection (14) of this section; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

- (I) Devote time to a specific employment or occupation;
- (II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (III) Report as directed to the court and a community corrections officer;
- (IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or
- (V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to

be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community custody, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community custody.

(v) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in (a)(vi) of this subsection.

(vi) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(vii) Except as provided in (a)(viii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(viii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (8) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (8) and the rules adopted by the department of health.

For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.

Nothing in this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (8)(b) does not apply to any crime committed after July 1, 1990.

(c) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(9)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the

second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances;

(v) The offender shall pay supervision fees as determined by the department of corrections; and

(vi) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

(c) As a part of any sentence imposed under (a) or (b) of this subsection, the court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol;

(v) The offender shall comply with any crime-related prohibitions;

or

(vi) For an offender convicted of a felony sex offense against a minor victim after June 6, 1996, the offender shall comply with any terms and conditions of community placement imposed by the department of corrections relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(10)(a) When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, the court shall, in addition to other terms of the sentence, sentence the offender to community custody



for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2).

(b) Unless a condition is waived by the court, the terms of community custody shall be the same as those provided for in subsection (9)(b) of this section and may include those provided for in subsection (9)(c) of this section. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (14) of this section.

(c) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(11) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(12) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(13) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(14) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections.

(a) The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(b) For sex offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. The conditions authorized under this subsection (14)(b) may be imposed by the department prior to or during a sex offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to subsection (10) of this section occurs during community

custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of a sex offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) of this section.

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(15) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(16) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(17) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(18) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(19) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(20) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(21) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

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